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No. ———

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

AMERADA HESS CORPORATION *et al.*,
Appellants,

v.

DIRECTOR, DIVISION OF TAXATION,
Appellee.

On Appeal from the Supreme Court of New Jersey

APPENDIX TO JURISDICTIONAL STATEMENT

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WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

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APPENDIX A

SUPREME COURT OF NEW JERSEY

SEPTEMBER TERM, 1986

Docket Nos. 25,264-25,277

AMERADA HESS CORPORATION, ATLANTIC RICHFIELD COMPANY, CONOCO INC., CITIES SERVICE COMPANY, EXXON CORPORATION, PHILLIPS PETROLEUM COMPANY, CHEVRON U.S.A. INC., MOBIL OIL CORPORATION, UNION OIL COMPANY OF CALIFORNIA, GULF OIL CORPORATION, SHELL OIL COMPANY, DIAMOND SHAMROCK CORPORATION, TENNECO OIL COMPANY, AND TEXACO, INC.,
Plaintiffs-Respondents,

v.

DIRECTOR, DIVISION OF TAXATION,
Defendant-Appellant.

Argued November 18, 1986—Decided June 22, 1987

The opinion of the court was delivered by

KING, P.J.A.D. (temporarily assigned).

This case concerns the interpretation of seven words in the New Jersey Corporation Business Tax (C.B.T.), *N.J.S.A.* 54:10A-1 to -40. These seven words, "on or measured by profits or income," determine whether the Federal Windfall Profit Tax on Domestic Crude Oil (W.P.T.), 26 *U.S.C.A.* § 4986 to § 4998, is excludable in computing the oil company plaintiffs' net income taxable under our C.B.T.

Entire net income is the base on which New Jersey's C.B.T. is assessed. The entire net income base for the C.B.T. is similar but not identical to the tax base used for federal corporate income purposes. Adjusted gross income for federal tax purposes is calculated by deducting certain federal and State taxes paid by the corporation. New Jersey law specifically requires that certain amounts paid in federal taxes be added back into the tax base for calculation of the C.B.T. This is called the "add-back" provision. Thus, the base for federal corporate income tax is not identical to the "net income" base on which the C.B.T. is assessed. This difference is at the core of the dispute before us.

The fourteen plaintiffs in this case are vertically integrated oil companies that engage in every aspect of the crude oil business, including exploration, development, refining, manufacturing and marketing. None of the plaintiffs has oil producing properties in New Jersey, but all conduct other aspects of their business within this State. In this case the oil companies urge that they can exclude the amount they paid in the Federal Windfall Profits Tax on Domestic Oil (W.P.T.), I.R.C. §§ 4986 to 4998, from the calculation of their net taxable income for purposes of the New Jersey's Corporation Business Tax (C.B.T.), *N.J.S.A.* 54:10A-1 to -40. The Director of the Division of Taxation disagrees and argues that these payments are not excludable.

The C.B.T. is a fairly allocated franchise or excise tax levied on business corporations for the privilege of "doing business, employing or owning capital or property, or maintaining an office" in New Jersey. *N.J.S.A.* 54:10A-2, 10A-8. The tax basis for the C.B.T. is "entire net income" which is defined in *N.J.S.A.* 54:10-4(k) as

> total net income from all sources, whether within or without the United States, and shall include the gain derived from the employment of capital or labor, or from both combined, as well as profit gained through

> a sale or conversion of capital assets. For the purpose of this act, the amount of a taxpayer's entire net income shall be deemed *prima facie* to be equal in amount to the taxable income, before net operating loss deduction and special deductions, which the taxpayer is required to report to the United States Treasury Department for the purpose of computing its federal income tax.

However, subsection (k) also provides that

> (2) Entire net income shall be determined without the exclusion, deduction or credit of:
>
> * * * *
>
> (C) Taxes paid or accrued to the United States *on or measured by profits or income* * * *.

[*N.J.S.A.* 54:10A-4(k)(2)(C) (emphasis supplied).]

The crucial issue in this case is whether the W.P.T. is a tax "on or measured by profits or income" within the intent of *N.J.S.A.* 54:10A-4(k)(2)(C). If the W.P.T. is a tax "on or measured by profits or income" within the intent of the C.B.T., the Director was correct in disallowing its exclusion from the net income base for C.B.T. purposes. At the time the net income provision was added to the corporation business tax in 1958, *L.* 1958, *c.* 63, the W.P.T. did not exist. *F.W. Woolworth Co. v. Director, Div. of Taxation*, 45 *N.J.* 466, 473 (1965). Therefore the drafters and adopters of this section of the C.B.T. could not have harbored any specific legislative intent on includability of the W.P.T., which became effective in 1980, in the tax base.

The federal "windfall profits tax on domestic crude oil," I.R.C. §§ 4986-4998 (1980), was imposed after President Carter announced that he would gradually decontrol domestic crude oil prices beginning in June 1979. The price controls originated with President Nixon's Wage and Price Controls in August 1971. The Energy

Policy Act made them mandatory through May 1977 and gave the President discretion to remove them until 1981. *See* H.R. Rep. No. 304 96th Cong. 1st Sess. 1980 U.S. Code Cong. & Ad. News 1980, 410, 591. 42 *U.S.C.A.* § 6201, and scattered sections to § 6392. Because of the shortage of crude oil for American markets caused by supply cut-backs by Iran and other international producers, President Carter decided to exercise his authority and decontrol prices during 1979. The background of the W.P.T. was described by Justice Powell in *United States v. Ptasynski*, 462 *U.S.* 74, 76-77, 103 *S.Ct.* 2239, 2240, 2241, 76 *L.Ed.*2d 427 (1983).

> In 1979, President Carter announced a program to remove price controls from domestic oil by September 30, 1981. [See H.R. Rep. No. 96-304, 5 (1979) reprinted in 1980 U.S. Cong. & Ad. News 593]. By eliminating price controls, the President sought to encourage exploration for new oil and to increase production of old oil from marginal economic operations. See H.R. Doc. No. 96-107, 2 (1979). He recognized, however, that deregulating oil prices would produce substantial gains (referred to as "windfalls) [*sic*] for some producers. The price of oil on the world market had risen markedly, and it was anticipated that deregulating the price of oil already in production would allow domestic producers to receive prices far in excess of their initial estimates. See *ibid.* Accordingly, the President proposed that Congress place an excise tax on the additional revenue resulting from decontrol.

Congress responded by enacting the Crude Oil Windfall Profit Tax Act of 1980, 94 Stat. 229, 26 *U.S.C.* § 4986 *et seq.* (1976 ed., Supp V) [I.R.C. §§ 4986 to 4998]. The Act divides domestic crude oil into three tiers and establishes an adjusted base price and tax rate for each tier. See §§ 1986, 1989, and 4991. The base prices generally reflect the sell-

> ing price of particular categories of oil under price controls, and the tax rates vary according to the vintages and types of oil included within each tier. See Joint Committee on Taxation, General Explanation of the Crude Oil Windfall Profit Tax Act of 1980, 96th Cong., 26-36 (Comm. Print 1981). The House Report explained that the Act is "designed to impose relatively high tax rates where production cannot be expected to respond very much to further increases in price and relatively low tax rates on oil whose production is likely to be responsive to price." H.R. Rep. No. 96-304, at 7 [reprinted in 1980 U.S. Cong. & Ad. News 594]; see S. Rep. 96-394, p. 6 (1979) [reprinted in 1980 U.S. Cong. & Ad. News 417]

Thus, the windfall tax was imposed on the incremental income attributable to decontrol of domestic prices. This incremental income was created by the cartel-generated international oil shortages, which had driven up international oil prices. It was attributable to world market conditions designed to limit supply and to raise prices; it was not generated by any infusions of capital or the expenditure of creative entrepreneurial energy by the domestic oil producers. Thus, there emerged the concept of taxing "windfall profits," or profits not earned by traditional economic activity as known to our economy. In mid-1979 just before the beginning of President Carter's decontrol of oil prices, the controlled price of "old" oil was $5.86 a barrel, the controlled price of "new" oil was $13.06 a barrel, and the uncontrolled world price was approaching $20 per barrel. The world price eventually reached $30 per barrel.

The W.P.T. differed from the regular federal corporate income tax as it was imposed on production at the wellhead rather than on these integrated domestic producers' overall net profits or income ultimately calculated from gross sales and net profits as measured at the pump.

This method of taxation creates the dispute at hand—whether the W.P.T. is "on or measured by profits or income" or is another species of tax. As noted, the basic measure of the windfall profit was the difference between the uncontrolled and controlled price of a barrel of crude oil at the point the oil was removed from the producing property. The actual tax rate varied from 30% to 70%, I.R.C. § 4987, and was determined by the length of time the property had been productive. Because oil from newly-productive property was taxed at a lower rate than oil from older wells, tax differentials motivated exploration for and discovery of new oil-producing properties by the domestic companies, thus reducing dependency on foreign oil.

A net income limitation (N.I.L.) also was enacted by Congress to insure that the W.P.T. would not be imposed on a company when the costs of production exceeded the income from a particular property. I.R.C. § 4988. The N.I.L. placed a ceiling on the taxable windfall profit equal to 90% of the net income from a barrel of oil, netting barrels sold at a profit with barrels selling at a loss. I.R.C. § 4988(b). The W.P.T. was imposed on the lesser of the windfall profit or 90% of the net income per barrel. All fourteen respondent oil companies used the N.I.L. to calculate their W.P.T. liability for the taxable years under scrutiny, 1980 and 1981. The use of the N.I.L. resulted in a total savings of $1,685,465,293 to these taxpayers over the tax that would have applied if the wellhead assessment had stood alone without the N.I.L. The W.P.T. is a deduction for federal income tax purposes. I.R.C. §§ 164(a)(4), 4988(b). The W.P.T. remains effective until December 1990 or until $227.3 billion is realized, whichever is later. I.R.C. § 4990.

In the spring of 1983 the fourteen respondent oil companies filed complaints in the New Jersey Tax Court challenging either assessments for deficiencies or denial of refund claims in respect of all of their 1980, and in

five instances their 1981, C.B.T. returns. The Director of the Division of Taxation in each case had denied deduction of the W.P.T. from the C.B.T. "net income" base. For each denial, the Director had relied on the position of the New York State Department of Taxation and Finance, which ruled in May 1982 that the W.P.T. was a measure of profits and not excludable for purposes of determining income under the New York Corporate Franchise Tax, which is similar to the C.B.T. *TSI-M* 82 (227) *CCH State Tax Rptr.* (N.Y.) ¶ 9-909. The New York administrative ruling, set out in the margin in full, concluded: "As the windfall profit tax is measured by profit the modification is required and the tax must be added to entire net income." [1]

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[1] Memorandum *TSB-M*-82(22)C.

Technical Services Bureau, Taxpayer Services Division, Department of Taxation and Finance, Corporation Tax, July 12, 1982.

Opinion of Counsel

Deductibility of Federal Windfail Profits Tax under Article 9-A

May 28, 1982

William A. Craven, Director

Audit Division

Your memorandum of November 14, 1980 to Saul Heckelman requested an opinion as to whether the windfall profit tax imposed by Chapter 45 of the Internal Revenue Code of 1954, as amended, is a modification increasing the entire net income base for the Article 9-A franchise tax of subject taxpayers.

Section 208.9 of the Tax Law provides in pertinent part that:

"(b) Entire net income shall be determined without the exclusion, deduction or credit of:

(1) the amount of any specific exemption or credit allowed in any law of the United States imposing any tax on or measured by the income of corporations,

* * * *

(3) taxes on or measured by profits or income paid or accrued to the United States, . . ."

Section 4986(a) of the Internal Revenue Code provides that: [2]

The oil companies and the Director filed cross-motions for summary judgment in the Tax Court. Judge Conley granted summary judgments for the Director. *Amerada Hess v. Director, Div. of Taxation*, 7 *N.J. Tax* 51 (1984) (*Amerada I*). He concluded that our "legislature surely perceived the windfall profits tax to be a tax on profits or income and felt no need to amend the corporation business tax for that reason." *Id.* at 56. In holding that

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"An excise tax is hereby imposed on the windfall profit from taxable crude oil removed from the premises during each taxable period."

The tax is also characterized in the conference report as a severance tax.

Section 4987(a) thereof states that the tax is an applicable percentage of windfall profit; windfall profit is defined in section 4988(a) thereof as follows:

"General Rule. For purposes of this chapter, the term 'windfall profit' means the excess of the removal price of the barrel of crude oil over the sum of—

(1) the adjusted base price of such barrel, and

(2) the amount of the severance tax adjustment with respect to such barrel provided by section 4996(c)."

Section 4988 thereof places a net income limitation on windfall profit.

Section 164(a)(5) of the Internal Revenue Code, as amended by Public Law 96-223, allows a deduction from federal adjusted gross income for the amount of windfall profit tax; other deductible taxes allowed under section 164 include those levied on real property, personal property, foreign, state and local income taxes, and general sales taxes.

The modification required by section 208.9(b)(3) of the Tax Law is not dependent on whether the federal tax is an excise tax or property tax or income tax in nature. The modification is required where the tax is levied on or measured by profit or income. As the windfall profit tax is measured by profit, the modification is required and the tax must be added to entire net income.

PAUL B. COBURN

Deputy Commissioner and Counsel

the sum of the W.P.T. must be included in the "net income" base, Judge Conley accepted the Director's contention that the Legislature did not have to amend the C.B.T. after the W.P.T. was enacted because the W.P.T. already fell within the "add-back" provision of *N.J.S.A.* 54:10A-4(k)(2)(C). He rejected the oil companies' contention that because the Legislature did not amend the C.B.T., the W.P.T. did not fall within the "add-back" provisions and that excludability was intended.

The oil companies moved for reconsideration of Judge Conley's decision. Judge Lario, who was assigned to hear these motions because Judge Conley had resigned from the bench to return to private practice, refused to "substitute . . . [his] interpretation of the Legislature's intent," for that of Judge Conley. *Amerada Hess Corp. v. Director, Div. of Taxation*, 7 *N.J. Tax* 275, 282 (1985) (*Amerada II*).

The Appellate Division reversed the Tax Court and held that the W.P.T. was "a federal excise tax imposed upon the difference between world prices and the adjusted base price." *Amerada Hess Corp. v. Director, Div. of Taxation*, 208 *N.J.Super.* 201, 203 (1986) (*Amerada III*), and that in calculating the net income base for the purposes of C.B.T., the oil companies could exclude the W.P.T. The Appellate Division reasoned that since the W.P.T. was imposed as each barrel of crude oil is brought to the surface, "its consequences are in no way dependent upon the realization of gain or income, and no provision is made for a refund or credit should the barrel not be sold," *id.* at 203-04, and held that "the W.P.T. is not a tax on or measured by profits or income within the meaning of *N.J.S.A.* 54:10A-4(k)(2)(C)." The Appellate Division did not think that the 90% N.I.L. materially influenced the analysis because the N.I.L. was calculated on "properties" of the oil producer and not on "overall profitability." *Ibid.*

For the reasons given below, we reverse the judgment of the Appellate Division and reinstate the judgment of the Tax Court.

I

We conclude that the Tax Court properly applied the principle of probable legislative intent in deciding that the phrase in *N.J.S.A.* 54:10-4(k)(2)(C), "taxes paid or accrued to the United States on or measured by profits or income," included the W.P.T. The principle of probable intent applies where the legislative body, when adopting a statute, could not have contemplated a specific situation. In such a case we have said:

> Generally, a court's duty in construing a statute is to determine the intent of the Legislature. In cases such as this, where it is clear that the drafters of a statute did not consider or even contemplate a specific situation, this Court had adopted as an established rule of statutory construction the policy of interpreting the statute "consonant with the probable intent of the draftsman 'had he anticipated the situation at hand'." *J.C. Chap. Prop. Owner's etc. Assoc. v. City Council*, 55 *N.J.* 86, 101 (1969) (quoting *Dvorkin v. Dover Tp.*, 29 *N.J.* 303, 315 (1959)); *Safeway Trails, Inc. v. Furman*, 41 *N.J.* 467 appeal dismissed and *cert.* den., 379 *U.S.* 14, 85 *S.Ct.* 144, 13 *L.Ed.*2d 84 (1964). Such an interpretation will not "turn on literalisms, technisms or the so-called rules of interpretation; [rather] it will justly turn on the breadth of the objectives of the legislation and the commonsense of the situation." *J.C. Chap. Prop. Owner's*, 55 *N.J.* at 100. [*AMN, Inc. v. South Brunswick Township Rent Leveling Bd.*, 93 *N.J.* 518, 525 (1983).]

One commentator has noted, "Legislative purpose may also be a valuable guide to decision in cases where the effect of a statute on the situation at hand is unclear

. . . because the situation was unforeseen at the time when the act was passed, . . ." 2A C. Sands, *Sutherland Statutory Construction*, § 45.09 (4th ed. 1984) (hereinafter *Sutherland*). The "common sense" of this situation, as we perceive it, and as the Tax Court pointed out, *Amerada I*, 7 *N.J.Tax* at 56, is that if the Legislature had anticipated the enactment of the W.P.T., it would have been concerned over the possible effect of a new federal tax on profits on the State's revenues. The deductibility of the W.P.T. would shrink the State's tax base by the amount of the taxes paid. We think the Legislature probably would have viewed the W.P.T. as a tax on the "profits" and 'income" of oil companies, thereby avoiding a revenue loss. Thus, no amendment to the C.B.T. would have been necessary to embrace the W.P.T. within the inclusive basis of *N.J.S.A.* 54:10A-4(k)(2)(C).

We reject the oil companies' contention that the doctrine of legislative intent has no application because the meaning of the statute is unclear and all doubts should be resolved in favor of the taxpayer. *See Fedders Fin. Corp. v. Director, Div. of Taxation*, 96 *N.J.* 376, 386 (1984); *see also White v. United States*, 305 *U.S.* 281, 292, 59 *S.Ct.* 179, 184, 83 *L.Ed.* 172 (1938), where Justice Stone said

> We are not impressed by the argument that, as the question here decided is doubtful, all doubts should be resolved in favor of the taxpayer. It is the function and duty of the courts to resolve doubts. We know of no reason why that function should be abdicated in a tax case more than in any other where the rights of suiters turn on the construction of a statute and it is our duty to decide what the construction fairly should be.

Here we do not think the statute is unclear or of doubtful meaning. Moreover, where the taxpayer seeks exemp-

tion or deduction urging exclusion from the scope of the taxing statute, "the probable legislative intent is one of inclusion and exemptions are to be construed narrowly," *Fedders*, 96 *N.J.* at 386; *Boys' Club of Clifton, Inc. v. Township of Jefferson*, 72 *N.J.* 389, 398 (1977). The reason for this rule of construction is plain. Taxes "are demanded and received in order for government to function." *Bloomfield v. Academy of Medicine of N.J.*, 47 *N.J.* 358, 363 (1966). Exemptions "from taxation represent a departure and consequently they are most strongly construed against those claiming exemption." *Id.* As the Tax Court pointed out, "the issue here is whether the "plaintiffs may exclude or deduct the W.P.T." *Amerada I*, 7 *N.J.Tax* at 53. The Director's ruling that the taxpayers here did not meet that burden was reasonable in the circumstance.

We also reject the oil companies' contention that the issue involves solely the "add-back" of the W.P.T. to income or the inclusion of the W.P.T. in income. The scheme of the C.B.T. supports the Tax Court's characterization of the issue as one involving an exclusion or deduction. "Entire net income" for purposes of the preliminary computation of the C.B.T.'s income base is "federal taxable income" before the net operating loss deduction and special deductions, *e.g.*, the dividends received by corporations' deduction of *I.R.C.* § 243. *N.J.S.A.* 54:10A-4(k). As shown by some of the plaintiffs' 1980 and 1981 federal income tax returns, the W.P.T. was claimed as a deduction on line 17 in arriving at federal taxable income. But *N.J.S.A.* 54:10A-4(k)(2) provides that certain exclusions, deductions and credits are not allowed to the taxpayer in calculating entire net income under *N.J.S.A.* 54:10A-4(k)(2)(C). As noted, one disallowed deduction is for "taxes or accrued to the United States on or measured by profits from income." Thus the correct characterization of the issue is whether the W.P.T. is a proper exclusion or deduction.

The oil companies' reliance on *Fedders* is unsuccessful for another reason. In *Fedders*, Justice Schrieber noted that in addition to the rule concerning the strict construction of taxing statutes "when interpretation of a taxing statute is in doubt," 96 *N.J.* at 385, there is a second principle: a court must "follow the clear import of statutory language." *Id.* at 384-85. The Tax Court correctly concluded that the "clear import" of the W.P.T. fit the language of the taxing statute—"taxes on or measured by profits or income"—as these words are commonly understood.

Another fundamental principal of statutory construction applies here. Statutes must be read as a whole, giving effect where possible to every word. *Brown v. Brown*, 86 *N.J.* 565, 577 (1981); *Fabbi v. Division of Employment Sec.*, 35 *N.J.* 601, 606 (1961). When *N.J.S.A.* 54:10A(4(k), including subsection (k)(2)(C), is read in its entirety, we see that when the Legislature wanted to define the word "income" in terms of the federal income tax law, it did so in clear terms. The statute states that "entire net income" prior to the modifications in subsection (2)(A) through (2)(F) "shall be deemed . . . to be . . . the taxable income . . . which the taxpayer is required to report to the United States Treasury Department for the purpose of computing its federal income tax." The language of subsection (k)(2)(C) is completely different. The disallowed federal taxes are not described as income taxes, or net income taxes, or taxes based on income as measured for federal income tax purposes, but simply as federal taxes "on or measured by profits or income," a more inclusive concept. Nowhere in the C.B.T. do we find any intent to disallow only federal taxes similar or identical to the federal income tax.

The distinction between the preliminary computation of entire net income under the C.B.T. (which is clearly referenced to the federal income tax) and the modifica-

tions to that preliminary computation, which differs from the federal income tax, was explained by that Tax Court in *International Flavors and Fragrances, Inc. v. Director Div. of Taxation*, 5 *N.J.Tax* 617 (1983), aff'd, 7 *N.J. Tax* 652 (App.Div.1984), aff'd, 102 *N.J.* 210 (1986), when it said

> While the starting point for determination of entire net income under the act is taxable income, before net operating loss deduction and special deductions, which the taxpayer is required to report for Federal income tax purposes, the Corporation Business Tax deviates from the federal tax by providing its own inclusions and exclusions from the tax base. *N.J.S.A.* 54:10A-4(k). Only at the initial point is it indicated that the Legislature intended that federal standards were to be controlling. [5 *N.J.Tax* at 624.]

The Tax Court in the case before us agreed with this conclusion. *Amerada I*, 7 *N.J.Tax* at 57.

Finally on this point, we reject the oil companies' contention that legislative inaction or silence in respect of the enactment of the W.P.T. supports its contention on non-inclusion. We find the doctrine of probable legislative intent a more reliable guide than the so-called doctrine of legislative inaction. "Legislative inaction has been called a 'weak reed upon which to lean' and a 'poor beacon to follow' in construing a statute." 2A *Sutherland* § 49.10. We see no common-sense reason why our Legislature would not have intended the W.P.T. to be included within the statutory disallowance for tax "on or measured by profits or income." We adopt Judge Conley's words in the Tax Court in this case when he said: "I am entirely satisfied from the ordinary meaning of these words and from the public perception of the purpose of the Windfall Profit Tax, that the legislators would have been reassured that no amendment of the statutory language was

needed to protect the State's revenue source." 7 *N.J.Tax* at 56.

We find Justice Scalia's discussion of the use of legislative inaction as a tool of interpretation in *Johnson v. Transportation Agency, Santa Clara County*, 480 *U.S.* ——, 107 *S.Ct.* 1442, 94 *L.Ed.*2d 615 (1987) (dissenting opinion) of interest and apt.

> The majority's response to this criticism of [*Steelworkers v. Weber*, 443 *U.S.* 193, 99 *S.Ct.* 2721, 61 *L.Ed.* 2d 480 (1979)], . . . asserts that, since "Congress has not amended the statute to reject our construction, . . . we . . . may assume that our interpretation was correct." This assumption, which frequently haunts our opinions, should be put to rest. It is based, to begin with, on the patently false premise that the correctness of statutory construction is to be measured by what the current Congress desires, rather than by what the law as enacted meant. To make matters worse, it assays the current Congress' desires *with respect to the particular provision in isolation*, rather than (the way the provision was originally enacted) as part of total legislative package containing many *quids pro quo*.
>
> * * * *
>
> But even accepting the flawed premise that the intent of the current Congress, with respect to the provision in isolation, is determinative, one must ignore rudimentary principles of political science to draw any conclusions regarding that intent from the *failure* to enact legislation. The "complicated check on legislation," The Federalist No. 62, p. 378 (C. Rossiter ed. 1961), erected by our Constitution creates an inertia that makes it impossible to assert with any degree of assurance that congressional failure to act represents (1) approval of the status quo, as opposed to (2) inability to agree upon how to alter

the status quo, (3) unawareness of the status quo, (4) indifference to the status quo, or even (5) political cowardice. It is interesting to speculate on how the principle that congressional inaction proves judicial correctness would apply to another issue in the civil rights field, the liability of municipal corporations under § 1983. In 1961, we held that that statute did not reach municipalities. See *Monroe v. Pape*, 365 *U.S.* 167, 187 [81 *S.Ct.* 473, 484, 5 *L.Ed.* 2d 492] (1961). Congress took no action to overturn our decision, but we ourselves did, in *Monell v. New York City Dept. of Social Services*, 436 *U.S.* 658, 663 [98 *S.Ct.* 2018, 2021-22, 56 *L.Ed.*2d 611] (1978). On the majority's logic, *Monell* was wrongly decided, since Congress' seventeen years of silence established that *Monroe* had not "misperceived the political will," and one could therefore "assume that [*Monroe's*] interpretation was correct." On the other hand, nine years have now gone by since *Monell*, and Congress *again* has not amended § 1983. Should we now "assume that [*Monell's*] interpretation was correct"? Rather, I think we should admit that vindication by congressional inaction is a canard. [480 *U.S.* at ——-——, 107 *S.Ct.* at 1472-73, 94 *L.Ed.*2d at 656-57.]

For these reasons, we hold that the Tax Court correctly reasoned that under the doctrines of probable legislative intent and common-sense plain meaning the oil companies may not deduct the W.P.T. in calculating net income for C.P.T. purposes.

II

The characterization by the Director of the W.P.T. as a tax measured by "income" or "profits" is not an unusual or extreme conclusion. It is consistent with the conclusions reached by others and with oil industry economics.

A California decision construing the analogous phrase in the California corporation franchise tax, "taxes on or according to or measured by income or profits," concluded that the phrase included taxes on or measured by gross income. *MCA, Inc. v. Franchise Tax Bd.*, 115 *Cal.App.*3d 185, 171 *Cal.Rptr.* 242, (Ct.App.1981) (taxes paid to foreign governments on gross film rents and gross record royalties not deductible). "The fact that such rents and royalties also constituted MCA's gross receipts [did] not make the taxes any less taxes measured by gross income." *Id.* at 192, 171 *Cal.Rptr.* at 246. As noted, the New York State Department of Taxation and Finance construed the identical phrase in the New York corporation franchise tax law against deductibility finding it a tax "on or measured by profits or income" whether labelled an excise tax, a property tax, or an income tax. *Supra* at ——. The Attorney General of South Carolina has concluded that the W.P.T. is a tax with respect to income that may not be deducted in computing income for South Carolina tax purposes. Opinion of the Attorney General, March 10, 1982, noted at *CCH State Tax Rptr.* (S.C.) ¶ 200-088.

The base and measure of the W.P.T. plainly fit the usual definitions of "income" and "profits." The W.P.T. is based on windfall profit. I.R.C. § 4986(a). The windfall profit is the difference between the removal or selling price and the adjusted base price plus severance tax adjudgment. I.R.C. § 4988(a). The adjusted base price is essentially the price that could have been obtained for the oil under price controls, adjusted for inflation. The windfall profit cannot be equated with the market value of oil; it is a net amount, not simply the sales price, as in the case of federal transactional excise taxes.

The average adjusted base price, or actual costs, if more, were deductible by the oil companies from the sale price or fair market value of their crude oil to determine the measure and base of the W.P.T. As explained by the

State's economic expert, Dr. Vasquez, the existence of "income" for tax purposes does not require the deduction of all true economic costs. There are many provisions that are more arbitrary than the adjusted base price, having "little if any connection to economic cost." I.R.C. § 63(c) and § 1(f) (personal deduction); I.R.C. § 616(a) (expensing exploration and development costs); I.R.C. § 613(a) (excess of percentage over cost depletion); I.R.C. § 168 (the timing of depreciation deductions for accelerated cost recovery). The record before us and the opinion of Professor Deakin, another State's economic expert, show that the deduction of the adjusted base price permitted the recovery of all allowable costs for those oil companies that revealed such costs. Dr. Deakin's report, which stands essentially unchallenged in the record, stated:

21. The base price deduction, on average, more than compensates oil producers for costs incurred to produce the oil subject to the tax. The severance tax adjustment allows a deduction for the additional severance tax that arises as a result of the increase in the removal price of the oil as a result of price decontrol. This adjustment permits a dollar for dollar recovery of those incremental costs. Under price controls, base prices were supposed to permit economic recovery of crude oil. This means that the crude oil production operations must obtain at least a normal profit under price controls. If they did not, then producers would be expected to shut down operations and invest their money in other activities, all of which would be contrary to energy policy at the time. The prices allowed under price control should, therefore, permit a producer to recover production costs plus a reasonable return on production. To the extent that the prices in the price control system carried over to the Windfall Profit Tax as adjusted base prices, deduction of the adjusted

base prices from revenue may be viewed as a deduction in lieu of itemizing production costs and normal profits. The Windfall Profit Tax itself is not included in the deductions to compute federal taxable income. To include either item in calculations of the tax base creates circularity.

22. Using the data available from published financial reports of these companies, it appears that the adjusted base prices exceeded average production costs (exclusive of Windfall Profit Tax) for all of the companies in this litigation. For example, in 1980, national adjusted base prices for the Windfall Profit ranged from $13.06 per barrel to $18.44 per barrel depending on the tier and the quarter. A survey of the annual reports of the companies showed that for 1980 the approximate average cost to produce an equivalent barrel of oil, exclusive of the Windfall Profit Tax but including depreciation, depletion and amortization, exploration costs, dry holes (when reported) and other costs to produce oil and gas ranged from $4.50 to $8.45 per barrel. Hence, on average, in 1980, these companies' costs were compensated for through the base price mechanism. In 1981, national adjusted base prices ranged from $14.47 to $20.81 per barrel, depending on the tier and the quarter in which the oil was produced. In 1981, the range of costs for the plaintiffs was between $7.49 and $13.48 per barrel. This analysis is based on costs reported according to generally accepted accounting principles and is subject to all the limitations that apply to such reports. Nonetheless, as a practical matter, the adjusted base price deduction appears to have the effect of allowing producers compensation for their average actual costs of production as those costs are measured under generally accepted accounting principles. Moreover, the difference between the adjusted base prices and the aver-

> age costs to produce is sufficiently large to allow compensation for some additional costs before the adjusted base price deduction would fail, on average, to compensate oil producers for their production costs. Indeed, the net income limitation provisions allow for those cases where the adjusted base price does not adequately cover the costs to produce oil.

Thus the tax is based on profits.

As well stated by a California appellate court

> The [W.P.T.] statute imposes an excise tax *on profit* and furnishes the mechanics by which the profit and the tax are to be calculated. Had Congress desired to impose a tax on removal, other language would have been used. [*Crocker Nat'l Bank v. McFarland Energy, Inc.*, 140 *Cal.App.*3d 6, 189 *Cal.Rptr.* 302, 304 (Ct. App. 1983) (emphasis added).]

See also Lewis v. Reagan, 516 F. Supp. 548, 553 (D.D.C. 1981) ("The Windfall Profit Tax taxes the increased *income* that will accrue to the owners of domestic oil properties after the limiting of price controls.") (emphasis supplied); *United States v. Ptasynski, supra*, 462 *U.S.* at 103, 103 *S.Ct.* at 2255, 76 *L.Ed.*2d at 436 ("[Congress] perceived that the decontrol legislation would result—in certain circumstances—in profits essentially unrelated to the objective of the program, *and concluded that these profits should be taxed.*") (emphasis added).

Many sections in the W.P.T. are intended to limit its tax base, not just to income but to that increment of income representing the excess of the uncontrolled price of oil over the controlled price. Further as Professor Deakin points out, we must assume that the controlled price permitted the recovery of the producer's costs or that a particular unprofitable field would have been abandoned by a prudent producer before decontrol. The adjusted base price equates roughly with the controlled price of oil in 1979. I.R.C. § 4989(c). The inflation adjustment is also cost motivated. I.R.C. § 4989(b). The severance tax adjustment, I.R.C. § 4988(a) and I.R.C. § 4996(c), insures that the base and measure of the W.P.T. excludes one of the major costs associated with decontrol—State severance taxes imposed on the incremental value of crude oil resulting from decontrol.

Congress' intention that the base of the W.P.T. allow a producer to recover production costs before taxation is most persuasively shown by the net income limitation (NIL) provision. I.R.C. § 4988. The purpose of the provision was to "prevent the tax from burdening high cost properties . . . where the net income per barrel is less than the windfall profit." (House Report at 2; Senate Report at 29). (H.R. Rep. No. 96-304, 96th Cong. 1st Sess. 1980 U.S. Code Cong. & Ad. News 589; S. Rep. No. 96-394, 96th Cong. 1st Sess. 29 (1979) 1980 U.S. Code Cong. & Ad. News 438, 439).

Computation of the net income per barrel is based upon the computations of gross income and taxable income used to determine percentage depletion for federal income tax purposes. I.R.C. § 4988(b)(3). Gross income from a property is determined under *Treas. Reg.* § 1.613-3, reprinted in *CCH Federal Tax Rptr.* 1987 Vol. 5, ¶ 3557C. This regulation helps determine gross income from the oil and gas well for I.R.C. § 613(a) and (c)(1) when the oil is not sold but is refined or converted by the same oil company. The regulation is used to determine gross income for purposes of computing percentage depletion—either the selling price in the immediate vicinity of the well, or, if the oil is not sold on the premises, the "representative market or field price before conversion or transportation." The latter price equates generally with the removal price under the W.P.T. when oil is not sold on the premises. Compare I.R.C. § 4988(b)(3) with I.R.C. § 4988(c)(3), both referenced to

I.R.C. § 613. Taxable income is the gross income from the property less the expenses set forth in the regulation, including operating expenses, certain sales costs, administrative and financial overhead, depreciation, taxes deductible under § 162 or § 164, (except the W.P.T.), losses, and exploration and development expenditures. I.R.C. § 4988(b)(3); *Treas. Reg.* § 1.613-3. These expenses are a producer's actual expenses incurred on or allocable to a particular property. The process of calculation of the net income or taxable income when the N.I.L. is employed is described in Shurtz, *"The Windfall Profit Tax—Poor Tax Policy? Poor Energy Policy?"* 34 *U. Miami L. Rev.* 1115, 1142-43 (1980).

> The net income or taxable income under section 4988(b) is calculated as it is under section 613(a), relating to percentage depletion, but with certain modifications. Taxable income from the property equals gross income less allowable deductions. Deductible items include operating expenses, certain selling expenses, administrative and financial overhead, depreciation, deductible taxes, losses sustained, intangible drilling and development costs, exploration and development expenditures, and other similar expenditures. For purposes of section 4988(b), this taxable income is calculated as in section 613 but without deductions for intangible drilling and development costs or the windfall profit tax. In lieu of these deductions, the Act allows an imputed cost depletion deduction, the calculation of which depends on whether the producer uses percentage or cost depletion. If a producer actually capitalizes intangible drilling costs for income tax purposes, he may reduce his taxable income from the property by the amount of the deduction under section 611 (either as cost depletion or as depreciation). If the producer used percentage depletion for the property for all periods during which he owned an economic interest in it, the producer's taxable income is reduced for cost depletion, which would have been allowable if all intangible drilling costs incurred by the taxpayer on the property had been capitalized and taken into account in computing the depletion. In contrast to the provisions of the House and Senate Reports, the Act allows the producer to treat qualified tertiary injectant costs as if they had been capitalized and recovered through cost depletion.

Despite the contrary suggestion by certain of the oil companies, cost depletion is allowed in determining net income. See I.R.C. § 4988(b)(3)(C). The W.P.T. itself is not allowed as a deduction in calculating the W.P.T. base. This is not surprising since the purpose of the net income computation is to determine the tax base for the W.P.T. To allow a deduction in the tax base for the tax itself would be circular. Under I.R.C. § 4988(b)(3)(C) such costs are deductible over time because they are included in the capitalized cost of the property for W.P.T. cost depletion purposes.

Hess mischaracterizes the N.I.L. in claiming that it is only a limitation on and does not define the base of the W.P.T. When the N.I.L. is invoked, the base for imposing the W.P.T. becomes 90% of the net income per barrel. As stated by Texaco's tax attorney, the W.P.T. is imposed on the "smaller" of the windfall profit or the net income per barrel. Alleged infrequent use of the N.I.L. during 1980 and 1981 as proof that it does not limit the tax base to net income, as urged by the Atlantic oil companies, is not persuasive. During the "phased decontrol" period, 1980, the N.I.L. substantially reduced the oil companies' W.P.T. liability. In 1980 all but one of the plaintiff oil companies computed the tax based upon the net income from the property on between 14% and about 73% of their respective production. The effect was less pronounced in 1981. The dollar reduction in tax liability for the various oil companies resulting

from use of the N.I.L. ranged from 21% to 45% in 1980 to 3% to 13% in 1981 and totaled $1,685,465,293 for these two years. The reason the N.I.L. was not used more frequently was that often the windfall profit was smaller than the net income base. In these cases, the deduction for the adjusted base price plus incremental severance taxes exceeded the oil companies' actual costs.

As the Director's expert Vasquez points out, the absence of absolute economic symmetry in a tax scheme is no ground to dismiss it as irrational, illogical or misdescribed. He stated:

> The plaintiffs argue that income implies a "gain," which in turn implies that the tax base is gross income less allowable deductions for cost. The plaintiffs argue that the Windfall Profit Tax is based solely on the value of oil above some threshold without reference to the cost of producing the oil.
>
> This assertion is wrong; the Windfall Profit Tax does in fact recognize cost. The higher of the adjusted base price or cost computed for the net income limitation is allowed as a deduction in computing income for purpose of the Windfall Profit Tax. The adjusted base price does not equal economic costs. However, under the current Federal individual and corporate income tax structures, the measure of income includes allowances for costs that are often just as arbitrary as allowing a deduction for the "adjusted base price." If the arbitrariness of deductions from income is grounds for declaring that the resulting net amount is not income for tax purposes, then the base of the corporate and individual income taxes fails to qualify as income on the same grounds.
>
> One example of the arbitrariness of allowable deductions is the zero bracket amount allowed individuals. The zero bracket amount allows a deduction

> from gross income that is not based on any notion of cost or outlay. Independent of the income spent on medical expenses, interest, state and local taxes, union dues or other allowable itemized deductions, a taxpayer is simply allowed to deduct an amount that was legislated by Congress. Similar to the adjusted base price, the zero bracket amount will increase with inflation starting in 1985. Despite this legislated deduction, the individual income tax is viewed by most analysts as a tax based on income.

We agree.

Under ordinary dictionary definitions of "income," *i.e.*, all that comes in without regard to expenditures, the windfall profit clearly constitutes "income." The windfall profit also meets a more restrictive definition, *i.e.*, gross receipts less costs of goods sold, because the deduction for the adjusted base price plus severance tax adjustments permits more than the deduction of getting the oil out of the ground (producer's cost of goods), and in cases where the windfall profit exceeds 90% of the net income per barrel, the tax base becomes the lower amount, 90% of net income. Even if the term "profits" is given its most restrictive meaning, *i.e.*, revenue less expenses, the base of the W.P.T. is within the definition because the N.I.L. permits the deduction of all reasonably allocable expenses before arriving at net income. Because the tax is reasonably geared to establishing realized or realizable gain at an easily-measured stage, we reject the oil companies' contention that there must be immediate realization from a sale or exchange, a netting of ultimate gains or losses of an integrated company, a computation of an integrated entrepreneur's income or profit, or an annual or other periodic computation. The Director's decision that the oil companies experienced a realization of income or profit upon extraction of oil at the well head is amply supported in this record and by common sense. It is very unlikely, if not realistically

impossible, given the structure of the W.P.T. and the market conditions under which it was imposed, that any integrated oil company producer would both pay the W.P.T. and suffer a net loss at the end of an annual period, and this was hardly the experience of the parties before us.

III

There is adequate support in the record for the conclusion that the windfall profit tax qualifies as a tax on "income" or "profit" in the economic sense. The Director's expert, Dr. Vasquez, reported that of the three necessary ingredients postulated by plaintiffs—realization, cost recovery, and time—only one, deduction for costs, was necessary to satisfy the economic definition of income. He also concluded that no existing federal tax would qualify as a tax on income if deductions for true economic costs were required as a strict test. Under the W.P.T. the deduction for the greater of the adjusted base price or actual costs under the N.I.L. is as accurate a representation of true costs as many of the deductions in the I.R.C. for other income tax purposes. For example, he explained that in the case of oil producers, the deduction for the excess of percentage over cost depletion, I.R.C. § 613(a), bears no relation to actual cost. Dr. Vasquez also observed that since economic income may be computed on "an accrual basis" without a sale, contemporaneous realization is not required. He concluded that while the deduction for the adjusted base price under the W.P.T. may be an arbitrary allowance for costs, it is no more arbitrary than the zero bracket amount, the expensing of exploration and development costs, and percentage depletion. He noted that the N.I.L. computation recognized costs in an economic sense—thus, the base and measure of the W.P.T., the lesser of the windfall profit per barrel or 90% of the net income per barrel, satisfied economic concepts of income as well as does the tax base for the conventional federal individual and corporate income tax satisfied such concepts.

In the Tax Court, the oil companies made no attempt to counter these opinions of the State's economists. They simply argued that the court should adopt the two other theories of income, realization and a flow of money accruing within a fixed temporal period. Where there is a rational basis in the record for the economic conclusion inferred from the facts, an appellate court may affirm. We cannot in any sense say that the factual conclusion of the Director and the decision of the Tax Court that the tax in fact was levied here on "profit" and "income" was arbitrary, capricious, unreasonable, or unsupported by substantial credible evidence in the record as a whole. *See Henry v. Rahway State Prison*, 81 *N.J.* 571, 579-80 (1980).

Among the early federal income tax decisions relied upon by the plaintiffs is *Eisner v. Macomber*, 252 *U.S.* 189, 40 *S.Ct.* 189, 64 *L.Ed.* 521 (1920). In determining that a common stock dividend paid on common stock was not income, the Court defined income as " 'the gain derived from capital, from labor, or from both combined,' provided it be understood to include profit gained through a sale or conversion of capital assets. . . ." 252 *U.S.* at 207, 40 *S.Ct.* at 193. The Court went on to state that income must be "something of exchangeable value . . . severed from the capital . . . and . . . received or drawn by the recipient (the taxpayer), for his separate use, benefit and disposal. . . ." *Ibid.* The receipt of a stock dividend did not permit the taxpayer to withdraw any part of his capital; rather, his investment remained "subject to the risks of the enterprise." *Id.* at 208, 40 *S.Ct.* at 194. The Court concluded that a taxpayer does not realize income if, "every dollar of his original investment, together with whatever accretions and accumulations have resulted from employment of his money . . . still remains . . . subject to business risks which may result in wiping out the entire investment." *Id.* at 211, 40 *S.Ct.* at 195.

The lifting of crude oil meets even the strict requirements of the *Macomber* definition of realization, including the requirement of conversion. When lifted to the surface and captured, the oil has been "severed" from the capital. It is no longer part of a deposit of unknown quantity several thousand feet down in the earth. As Professor Deakins noted, it has a fixed exchangeable value tied to a posted price system. The producer receives it for his separate use and benefit. The business risks have fundamentally changed; the producer's entire investment is unlikely to be wiped out. There has been a "conversion of capital assets" from an indeterminable underground deposit to a fungible, readily marketable product. (Deakin Report at 21). The *Macomber* requirement has since been modified. *See United States v. Kirby Lumber Co.*, 284 *U.S.* 1, 52 *S.Ct.* 4, 76 *L.Ed.* 131 (1931) (Gain to corporation by redeeming bonds at a price less than par value).

Lifting crude oil completes the production process and therefore constitutes "the completion of a transaction." *Helvering v. Bruun*, 309 *U.S.* 461, 469, 60 *S.Ct.* 631, 634, 84 *L.Ed.* 864, 869 (1940). While there may be no sale, the value of the oil is plainly "ascertainable." Posted prices

> control the amounts at which crude oil passes from hand to hand in the fields to which they relate. They are a bonafide competitive price, not subject to manipulation or rigging, for the reason, aside from others, that their maintenance is effectively policed by state regulatory bodies and also by state and Federal taxing authorities in connection with enforcement of taxing statutes. [*Skelly Oil Co. v. Commissioner of Taxation*, 269 *Minn.* 351, 131 *N.W.*2d 632, 636 (1964).]

The fact that the posted price may fall subsequent to the lifting of the oil or that some barrels may be lost following severance from the lease is irrelevant. The fact that some of the plaintiffs subsequently lose barrels of oil and are not entitled to refunds of W.P.T. in respect of such losses does not impugn the fact that oil production income is realized when the oil is lifted. According to this record these "downstream" losses are minimal, in fact less than .2% of production plus purchases of crude oil. The posted price fixes the value of the oil at the point of lifting. Later events do not detract from this fact (Deakin Report at 20).

Following production or lifting of crude oil, plaintiffs either sell the oil to third parties, exchange it with third parties, or transfer it to the refining division of their integrated businesses. For example, as a percentage of crude oil produced by the eleven Atlantic plaintiffs plus crude oil acquired after lifting from other companies, the Atlantic plaintiffs sold at the crude oil stage without refinement between 0% and 53% of their total barrels and exchanged between 0% and 84%. Every Atlantic plaintiff either sold or exchanged some amount of oil at the crude oil stage before refinement.

IV

The fact that the W.P.T. has been labeled or termed an excise tax (I.R.C. § 4986(a)) does not prevent it from being on or measured by income or profits. There are other federal excise taxes measured by income in Subtitle D—Miscellaneous Excise Taxes. I.R.C. § 4981 (excise tax on the undistributed taxable income of real estate investment trusts); I.R.C. § 4940 (excise tax on investment income of private foundations).

State taxes that are denominated franchise or excise taxes are often measured by income. The New Jersey corporation business tax itself is a franchise or excise tax measured in part by income. *Cities Service Co. v. Director, Div. of Taxation*, 5 *N.J.Tax* 257, 271 (1983). The savings institution tax, *N.J.S.A.* 54:10D-1 to -10D-

18, is stated to be an excise tax measured by net income. *N.J.S.A.* 54:10D-3; *see also Commissioner of Rev. v. Massachusetts Mutual Life Ins. Co.*, 384 *Mass.* 607, 428 *N.E.*2d 297 (1981).

Thus, despite Texaco's arguments to the contrary, the fact that the W.P.T. may be denominated an excise tax (I.R.C. § 4986) does not determine whether it falls within the statutory disallowance for taxes "on or measured by profits or income." The label appended to the tax is not conclusive. Indeed, it has been suggested that "income" for purposes of an excise tax may differ from "income" as conceived under an income tax. *Commissioner of Revenue v. Massachusetts Mut. Life Ins. Co., supra*, 428 *N.E.*2d at 301 (Massachusetts excise tax measured by gross investment income could include in the measure of the tax items such as imputed home office rent which would not be income in the traditional sense); *Polaroid Corp. v. Commissioner of Revenue*, 393 *Mass.* 490, 472 *N.E.*2d 259, 264 n.10 (1984). Under such a view, the fact that the W.P.T. is an excise tax supports rather than detracts from the conclusion that it is "on or measured by profits or income." *See Crocker Nat'l Bank v. McFarland Energy Inc.*, 140 *Cal.App.*3d 6, 189 *Cal.Rptr.* 302 (Ct. App.1983), where the court stated

> The [W.P.T.] statute imposes an excise tax on profit and furnishes the mechanics by which the profit and the tax are to be calculated. Had Congress desired to impose a tax on removal, other language would have been used. [*Id.* at 10, 189 *Cal.Rptr.* at 304.]

In dismissing a taxpayer's suit under the Anti-Injunction Act, the court in *Lewis v. Reagan, supra*, 516 *F.Supp.* at 552, noted that "The W.P.T. taxes the increased income that will accrue to the owners of domestic oil properties after the lifting of price controls."

As the Tax Court properly stated, "The precise issue in this litigation is whether the crude oil windfall profit

tax is a tax 'on or measured by profits or income' *within the intent of the Corporation Business Tax Act.*" *Amerada I*, 7 *N.J.Tax* at 54. Many federal legislators viewed the W.P.T. as exacted on profits. The House and Senate Committee Reports both stated that the tax will reduce the profits of the oil companies. *House Report* at 2, 1980 U.S.Code Cong. & Ad.News 589, 590; *Senate Report* at 2, 1980 U.S.Code Cong. & Ad.News 413, 414. Expressing their additional views, Senators Ribicoff, Nelson, Moynihan, Baucus, Bradley, Packwood, Roth, Danforth, Chafee, Heinz and Durenberger stated concerning the increases in world oil prices:

> Here, we believe, there is a huge "windfall" to producers; presumably, this oil was profitable at $6 and will be over 400 percent more profitable after decontrol. . . .
>
> Oil companies do not need to keep all the windfall profits from prior investments as an incentive to explain exploration and production, as long as they are assured of higher prices. According to their third quarter reports, cash flow is not a problem for most oil companies. Even under the committee bill, decontrol will add $374 billion to oil producers' net revenues over the next ten years. [*Senate Report* at 132-33, 1980 U.S.Cong. & Ad.News 538.]

In like vein, Senator Matsunaga stated

> While producers enjoy the windfall profits that will accrue because of cartel pricing, it is only fair that they should share this windfall profit with the Nation. [*Senate Report* at 162, 1980 U.S.Cong. & Ad.News 565.]

Numerous other Congressmen viewed the W.P.T. as a tax on profits. *See* 125 *Cong.Rec.* H17141 (Rep. Lederer); 125 *Cong.Rec.* H17141 (Rep. Shannon); 125 *Cong.Rec.* H17151 (Rep. Ullman); 125 *Cong.Rec.* H17152 (Rep. Harris).

IV

We reject the balance of the oil companies' additional contentions on this appeal for these reasons.

1. Hess asserts as its main argument that because the statutory disallowance for taxes on income and profits was added to the New York franchise tax to cover the federal income and federal excess profits tax, the disallowance in the C.B.T. can apply only to those taxes or to taxes that Hess equates with those taxes that in its view do not include the W.P.T. But Hess' argument overlooks the basic point that the reach of a statute is not limited to situations existing at the time of its adoption. *Radiofone Corp. of N.J. v. Director, Div. of Taxation*, 4 *N.J. Tax* 420, 430 (1982). As noted, the New York State Department of Taxation and Finance is in agreement with our view. Its official position is to disallow a deduction for the W.P.T. in determining entire net income under the New York analogue to New Jersey's CBT. *Supra.* at n.1. We agree with the Attorney General's observation that ultimately "the whole excursion into New York legislative history is beside the point." The language in the New Jersey C.B.T.—"taxes on or measured by profits or income"—is on its face sufficiently broad to include taxes other than the federal income tax and federal excess profits tax. Resort to New York legislative history is not helpful and surely not determinative.

2. The Atlantic plaintiffs urge that since the Director would not permit separate accounting in determining plaintiffs' entire net income, he cannot deny a deduction for the W.P.T. which they contend is measured by segmenting income or profit, that is, the income or profits from plaintiffs' exploration and production divisions. These plaintiffs assert that such an asymmetrical construction of *N.J.S.A.* 54:10A-4(k) is not permissible because *N.J.S.A.* 54:10A-4, -5, and -6 should be construed "in *pari materia*," citing *American Tel. & Tel. Co. v.*

Director, Div. of Taxation, 4 *N.J.Tax* 638 (1982), aff'd, 194 *N.J.Super.* 168 (App.Div.1984). We disagree. That case had nothing to do with a deduction claimed in arriving at entire net income. The court was there concerned with the inclusion of income items in subsection 4 and the inclusion of gross receipt items in subsection 6. Where, as here, the issue is the allowability of a claimed deduction and not the inclusion or exclusion of income from the tax base, there is not logical compulsion requiring a symmetrical computation with the receipts' fraction.

3. The Atlantic plaintiffs assert that the addition of the W.P.T. to the net income base of the C.B.T. results in a distortion between the base, which they contend now includes an item of unearned income, and the receipts factor of the apportionment fraction, which includes only earned receipts. Denial of a deduction for the W.P.T. may augment the entire net income by the amount disallowed but this does not add unrealized income to the base. Whether a deduction is allowed or disallowed in arriving at entire net income does not change the nature of plaintiffs' receipts, which are still realized. We find no precedent or justification for plaintiffs' contention that the disallowance provision applies only to federal taxes directed at the same income base as the C.B.T.

4. We reject the contention that denial of a deduction for the W.P.T. violates the Due Process Clause. Plaintiffs are concededly unitary businesses. New Jersey is entitled to include in their respective tax bases 100% of each companies' entire net income. The reduction of that base to reflect constitutionally taxable income attributable to New Jersey activities is accomplished by the three-factor apportionment formula. *Silent Hoist & Crane v. Director, Div. of Taxation*, 100 *N.J.* 1, 7 (1985). As the Tax Court properly noted, "[T]he question here is only whether plaintiffs may claim a deduction from their net income tax base, not whether there

should be an addition to that portion of the tax base." *Amerada I*, 7 *N.J.Tax* at 57.

Denial of the W.P.T. deduction does not violate the commerce clause because it does not favor in-state over out-of-state economic activity. *See Commonwealth Edison Co. v. Montana*, 453 *U.S.* 609, 101 *S.Ct.* 2946, 69 *L.Ed.*2d 884 (1981); *Exxon Corp. v. Governor of Maryland*, 437 *U.S.* 117, 98 *S.Ct.* 2207, 57 *L.Ed.*2d 91 (1978). Because the denial of a deduction for the W.P.T. was not based on the interstate nature of plaintiffs' businesses and did not burden out-of-state companies, consumers, or transactions while favoring in-state activities, the disallowance did not discriminate against interstate commerce. Nor does the disallowance overcome the strong presumption of constitutionality confronting the plaintiffs' equal-protection-clause attack. *Lehnhausen v. Lakeshore Auto Parts Co.*, 410 *U.S.* 356, 359, 93 *S.Ct.* 1001, 1003, 35 *L.Ed.*2d 351, 354-355 (1973). Plaintiffs are denied a deduction because they produce crude oil and pay the W.P.T. The fact that they are disallowed the deduction while non-oil-producing petroleum marketers are not affected is because non-oil-producing marketers do not pay the W.P.T. Moreover, the nonproducing marketers did not benefit, as did plaintiffs, from the decontrol of crude oil prices, but had to purchase their crude oil at the higher decontrolled prices.

5. Finally, we reject the contention that denial of a deduction violates the supremacy clause by thwarting federal energy and revenue policies. There is no substantial connection between disallowance of the deduction and the accomplishment of these policies. Although the legislative history suggests an assumption that the tax would generally be deductible for state income tax purposes, there is no shred of evidence that such treatment was a mandatory or integral part of the over-all federal policies motivating passage of the legislation. We find no readily apparently conflict with any federal

law or any expressed or clearly implied federal policy. *See Armstrong v. Director, Div. of Taxation*, 5 *N.J. Tax* 117, 131 (1983), aff'd *o.b.*, 6 *N.J.Tax* 447 (App. Div.1984). We will not presume such a conflict.

We reverse the judgment of the Appellate Division and reinstate the judgment of the Tax Court.

For reversal—Justices CLIFFORD, HANDLER, O'HERN, STEIN and KING—5.

For affirmance—None.

APPENDIX B

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

A-2795-84T7, A-2796-84T7
A-2797-84T7, A-2799-84T7
A-2800-84T7, A-2812-84T7
A-2809-84T7, A-2814-84T7
A-2813-84T7, A-2818-84T7
A-2816-84T7, A-2819-84T7
A-2832-84T7, A-2846-84T7

AMERADA HESS CORPORATION, ATLANTIC RICHFIELD COMPANY, CONOCO INC., CITIES SERVICE COMPANY, EXXON CORPORATION, PHILLIPS PETROLEUM COMPANY, CHEVRON U.S.A. INC., MOBIL OIL CORPORATION, UNION OIL COMPANY OF CALIFORNIA, GULF OIL CORPORATION, SHELL OIL COMPANY, DIAMOND SHAMROCK CORPORATION, TENNECO OIL COMPANY, AND TEXACO, INC.,
Plaintiffs-Appellants,

v.

DIRECTOR, DIVISION OF TAXATION,
Defendant-Respondent.

Argued January 7, 1986—Decided February 7, 1986

The opinion of the court was delivered by,

ANTELL, P.J.A.D.

Plaintiffs, consisting of fourteen domestic oil producers, appeal from a determination of the Tax Court requiring taxes paid to the federal government under the Crude Oil Windfall Profit Tax Act of 1980, 26 *U.S.C.A.* §§ 4986-4998, (hereinafter referred to as "WPT") to be included as taxable income under the New Jersey Corporation Business Tax Act, *N.J.S.A.* 54:10A-1 *et seq.* (hereinafter referred to as "CBT"). The opinion of the Tax Court is reported at 7 *N.J.Tax* 51 (Tax Ct.1984). The essential factual and statutory framework is not in dispute.

The CBT was amended in 1958 to provide for the payment of taxes on "entire net income." This is defined by *N.J.S.A.* 54:10A-4(k) as follows:

> (k) "Entire net income" shall mean total net income from all sources, whether within or without the United States, and shall include the gain derived from the employment of capital or labor, or from both combined, as well as profit gained through a sale or conversion of capital assets. For the purpose of this act, the amount of a taxpayer's entire net income shall be deemed prima facie to be equal in amount to the taxable income, before net operating loss deduction and special deductions, which the taxpayer is required to report to the United States Treasury Department for the purpose of computing its federal income tax; provided, however, that in the determination of such entire net income,
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> * * * *
>
> (2) Entire net income shall be determined without the exclusion, deduction or credit of:
>
> * * * *
>
> (C) Taxes paid or accrued to the United States on or measured by profits or income. . . .

This appeal focuses on the proviso that entire net income shall be determined "without the exclusion, deduc-

tion or credit of: * * * [t]axes paid or accrued to the United States on or measured by profits or income . . .," referred to as the "add-back" provision. As the Tax Court observed, the precise issue is whether the WPT tax is a tax on or measured by profits or income within the meaning of the foregoing enactment.

The WPT was enacted by Congress following the removal of controls upon the price of domestically produced crude oil. The effect of decontrol was to enable the oil producers to receive prices paid on the world market in competition with foreign producers. As respondent acknowledges, the WPT is a federal excise tax imposed upon the difference between world prices and the adjusted base price, which is the controlled price after allowance for inflation and severance taxes. The so-called windfall profit lies in the difference between the two prices. The tax is imposed on each barrel of crude oil when it is brought to the surface and "removed from the premises," 26 *U.S.C.A.* § 4986(a), regardless of how much the producer later receives for the barrel, whether it is ever resold on the market and even if it is lost or destroyed. Its consequences are in no way dependent upon the realization of gain or income, and no provision is made for a refund or credit should the barrel not be sold. However, the WPT provides for a "net income limitation" which confines the tax base to the lesser of the windfall profit per barrel or 90% of the net income attributable to the barrel. 26 *U.S.C.A.* § 4988(b)(1). The net income attributable to the barrel is calculated by dividing the taxable income realized by the particular oil property by the number of barrels produced. 26 *U.S.C.A.* § 4988(b)(2).

As one commentator has noted, the term "windfall profit" in the title of the Act is, in part, a misnomer. Shurtz, "The Windfall Profit Tax-Poor Tax Policy? Poor Energy Policy?" 34 *U.Miami L.Rev.* 1115, 1117 (1980). The structure of the Act is designed to increase the production of domestic oil and to promote energy independence for the United States. *Id.* at 1156. Thus, oil exploration is encouraged by imposing varying rates of taxation ranging from 30% to 70% on different "tiers" of oil. 26 *U.S.C.A.* § 4987(b). To greatly simplify, tier-one oil, upon which the highest tax rate is imposed, comes from properties which were producing before 1973; tier-two oil comes from properties which began production after 1972; tier-three oil includes oil produced through very expensive tertiary recovery techniques and oil discovered after January 1979. *See* 26 *U.S.C.A.* § 4991; Robison, "The Misnamed Tax: The Crude Oil Windfall Profits Tax of 1980," 84 *Dickinson L.Rev.* 589, 592-595 (1980). Under the Act, certain newly produced oil, such as that taken from a property in Alaska outside one of the existing Prudhoe Bay properties, is exempt. 26 *U.S.C.A.* §§ 4991(b) and 4994(e); Shurtz, *supra*, at 1156. It is evident, therefore, that the amount of tax actually realized from each barrel of crude removed from the premises is significantly affected by factors unrelated to income or profit.

Because the WPT is payable without regard to the profitability of the oil producers' overall business activities plaintiffs maintain that it is not a tax on or measured by profits or income and should therefore be deducted from entire net income in determining the tax base under the CBT.

The Tax Court decided that the WPT fell within the add-back provision of the CBT on the sole ground that by failing to amend the CBT following passage of the WPT the state legislature demonstrated its understanding that no further legislative action was needed to clarify its intent that the WPT *was not* deductible from entire net income. This rationale is flawed by the fact that it arbitrarily presupposes the very fact in question. The court could just as easily have reached a contrary result by assuming that the legislature did not amend

the CBT in recognition that the CBT as written sufficiently manifested its intent that the WPT *was* deductible from entire net income. Thus, it has been observed, "[i]nsofar as legislative intent is concerned inaction demonstrates nothing more than that subsequent legislatures failed to act." *Masse v. Public Employees Retirem. Sys.*, 87 *N.J.* 252, 264 (1981).

Our treatment of this issue begins with the rule that "when interpretation of a taxing provision is in doubt, and there is no legislative history that dispels that doubt, the court should construe the statute in favor of the taxpayer." *Fedders Financial Corp. v. Taxation Div. Dir.*, 96 *N.J.* 376, 385 (1984). See also *Kingsley v. Hawthorne Fabrics, Inc.*, 41 *N.J.* 521, 528-529 (1964) wherein the Supreme Court quoted approvingly the following language from *Gould v. Gould*, 245 *U.S.* 151, 153, 38 *S.Ct.* 53, 62 *L.Ed.* 211, 213 (1917):

> In the interpretation of statutes levying taxes it is the established rule not to extend their provisions, by implication, beyond the clear import of the language used, or to enlarge their operations so as to embrace matters not specifically pointed out. In case of doubt they are construed most strongly against the government, and in favor of the citizen.

In the definition of "entire net income" as a tax base for the CBT we discern from the use of such terms as "total net income," "gain" and "profit" an intent to tax the difference between revenues and expenses received and incurred in the overall conduct of business. Indeed, the statute itself specifies that entire net income

> shall be deemed prima facie to be equal in amount to the taxable income, before net operating loss deduction and special deductions, which the taxpayer is required to report to the United States Treasury Department for the purpose of computing its federal income tax. . . .

For purposes of federal income taxation the WPT is declared a deductible expense, like state and local taxes, 26 *U.S.C.A.* § 164(a)(5), rather than as one of the nondeductible taxes enumerated at 26 *U.S.C.A.* § 275, typically federal income, excess profits and penalty excise taxes. As H.R.Rep. No. 96-304 (June 22, 1979) states at 600: "the Windfall Profit Tax is a deductible business expense under the income tax."

In our view the purpose of the add-back provision is to preserve undiluted for state taxation the same tax base upon which federal income taxes were computed. That it should not be read to include legitimate business expenses so as to create tax liabilities in spite of overall losses is suggested by the philosophy implicit in the report of the New Jersey Tax Policy Committee, *Non-Property Taxes in a Fair and Equitable Tax System* (1972). This document was prepared by a distinguished committee appointed by Governor Cahill in 1970 and comprehensively reviews New Jersey's system of public financing. One of the questions which it explored was whether and to what extent New Jersey should rely on the net worth or net income components of the CBT. In recommending an increase in the tax rate on the net income component the committee stated:

> In reaching these conclusions, we have proceeded on the premise that, in general, the net income measure of the corporate tax commends itself, *because it imposes the levy in accordance with actual profits earned, whereas the net worth tax, which is essentially a levy measured by net property owned, is payable regardless of profit, and is, accordingly, levied on all corporations including those that experience losses during the taxable year.* Moreover, the tendency in State taxation in recent years has been to rely more and more on corporate income taxes. [*Id.* at 17. Emphasis ours].

Respondent's contention that the 90% net income limitation of the WPT is a safeguard against tax liability for an overall unprofitable operation does not affect our result. This is explained in *Robison, supra*, at 601, n. 89:

> This 90% net income limitation raises problems because it is calculated with respect to a "property" and not with respect to the overall profitability of the oil producing entity. Even small oil companies usually own several oil producing properties. Even if one oil property is producing oil at a profit substantial losses from other property may actually put the producer in a net loss position. The windfall profits tax will still have to be paid, however, on the oil produced from the "profitable" property. The possibility that an oil producer would have to pay the windfall profits tax although in a loss position was even recognized by a proponent of the tax. *See* Cong.Rec. S17481-82 (Daily Ed. Nov. 27, 1979) (remarks of Senator Chaffee in response to queries from Senator Armstrong).

We conclude that the WPT is not a tax on or measured by profits or income within the meaning of *N.J.S.A.* 54:10A-4(k)(2)(C).

Reversed.

APPENDIX C

TAX COURT OF NEW JERSEY

Docket Nos. CB 064B-83,
CB 065B-83, CB 066B-83,
CB 067B-83, CB 068B-83,
CB 069B-83, CB 070B-83,
CB 071B-83, CB 072B-83,
CB 073B-83, CB 074B-83,
CB 075B-83, CB 077B-83,
CB 128B-83

AMERADA HESS CORPORATION, DIAMOND SHAMROCK CORPORATION, SHELL OIL COMPANY, CITIES SERVICE COMPANY, EXXON CORPORATION, ATLANTIC RICHFIELD COMPANY, UNION OIL COMPANY OF CALIFORNIA, MOBIL OIL CORPORATION, PHILLIPS PETROLEUM COMPANY, GULF OIL CORPORATION, CHEVRON U.S.A. INC., CONOCO INC., TEXACO, INC., TENNECO OIL COMPANY,
Plaintiffs,

v.

DIRECTOR, DIVISION OF TAXATION,
Defendant.

Decided September 28, 1984

CONLEY, J.T.C.

This is a case of statutory construction. It involves the interpretation of only seven words in the New Jersey Corporation Business Tax Act (1945), *N.J.S.A.* 54:10A-1 *et seq.*, but the decision affects deficiency assessments

totalling more than ten million dollars against some of the major oil companies in the United States.

Since the identical legal issue is presented in each of the separate complaints filed by 14 taxpayers, the matters were consolidated for hearing and disposition. Plaintiff-taxpayers have all filed motions for summary judgment and the Attorney General of New Jersey has filed a cross-motion for summary judgment in each case. The parties have filed thousands of pages of briefs, affidavits, depositic transcripts and exhibits in connection with the motions. Some of the record has been sealed by consent pursuant to *R.* 4:10-3 because of the confidential nature of the oil and gas industry.

Stated succinctly, the dispute is whether in computing their entire net income on which the New Jersey corporation business tax is in part assessed, these taxpayers may exclude or deduct the amount of any taxes paid or accrued to the federal government under the Crude Oil Windfall Profit Tax Act of 1980, 94 *Stat.* 229, 26 *U.S.C.A.* §§ 4986-4997. Plaintiffs argue that they may exclude their windfall profit tax liabilities from this computation and the Director of the Division of Taxation argues that they may not do so. Some of the federal tax obligations are substantial, of course, and it follows that it makes a substantial difference whether plaintiffs' net income tax bases for corporation business tax purposes include or exclude the amounts of these federal tax obligations.

The seven statutory words to be construed are contained in the definition of "entire net income" found in *N.J.S.A.* 54:10A-4(K). Insofar as that section is pertinent to this matter it provides as follows:

> (K) "Entire net income" shall mean total net income from all sources, whether within or without the United States, and shall include the gain derived from the employment of capital or labor, or from

> both combined, as well as profit gained through a sale or conversion of capital assets. For the purpose of this act, the amount of a taxpayer's entire net income shall be deemed prima facie to be equal in amount to the taxable income, before net operating loss deduction and special deductions, which the taxpayer is required to report to the United States Treasury Department for the purpose of computing its federal income tax; provided, however, that in the determination of such entire net income,
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> * * * *
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> (2) Entire net income shall be determined without the exclusion, deduction or credit of:
>
> * * * *
>
> (C) Taxes paid or accrued to the United States *on or measured by profits or income. . . .* [*N.J.S.A.* 54:10A-4(K)(2)(C); emphasis supplied]

The precise issue in this litigation, therefore, is whether the crude oil windfall profit tax is a tax "on or measured by profits or income" within the intent of the corporation business tax act. The intent of the act is paramount because, as the New Jersey Supreme Court observed very recently: "We continue to adhere to the view that our task is to ascertain the legislative intent." *Fedders Financial Corp. v. Division of Taxation Director*, 96 *N.J.* 376, 385-86, 476 *A.*2d 741 (1984.

Although this is the threshhold [*sic*] issue, it has not been adequately addressed by plaintiffs. The court has been presented with a comprehensive and meticulous analysis of the crude oil windfall profit tax and the nuances of federal income and excise tax theory. However, little attention has been paid by the parties to what the apparent legislative purpose was in New Jersey in 1980 when the windfall profit tax was enacted by Congress.

The net income provision was added to the corporation business tax in 1958. *F.W. Woolworth Co. v. Taxation*

Division Director, 45 *N.J.* 466, 473, 213 *A.*2d 1 (1965). The crucial words in the present case were added to the corporation business tax at that time. *L.* 1958, *c.* 63, § 1. Much of the argument of the parties centers around the intent of the Legislature in 1958, but that argument is not very helpful. Since the Crude Oil Windfall Profit Tax Act of 1980 had obviously not been enacted as of then, the Legislature certainly did not intend in 1958 to deal specifically with this federal tax. This does not mean, however, that the Legislature was oblivious to the significance of the windfall profit tax when it was enacted in 1980.

The parties have briefed the court exhaustively on the executive and congressional response in the 1970's to the actions of the Organization of Petroleum Exporting Countries (OPEC) in exercising their power to control the prices of crude oil in the international marketplaces. According to commentators, the windfall profit tax represented the climax of an intense, seven-year debate on national oil policy which raised an issue as to the appropriate distribution of the increased revenues expected to be derived by domestic oil producers as a result of OPEC's actions. Drapkin and Verleger, "The Windfall Profit Tax: Origins, Development, Implications," 4 *B.C.L. Rev.* 631, 633 (1981).

There is no need to dwell on the history or the intricacies of the windfall profit tax. It will suffice to say that the American public was acutely aware of and immediately affected by the oil crisis of the early 1970's. The court takes judicial notice not only that petroleum products were in such short supply that government rationing was necessary, but also that retail prices of petroleum products reached levels previously unimagined in this country. In the face of these compelling circumstances, President Carter proposed the enactment of a windfall profit tax in conjunction with the gradual lifting of federal price controls on crude oil and refined

petroleum products. In his televised address to the nation in which he made this proposal on April 5, 1979, President Carter said:

> I want to emphasize that this windfall profits tax is not a tax on the American people. It is purely and simply a tax on the new profits of the oil producers which they will receive but not earn. [15 *Weekly Comp.* Pres. Docs. 611 (April 5, 1979)]

Conscientious state legislators could have been mindful at that time of the possibility that enactment of the windfall profit tax act might have some impact on state revenues. Had they been concerned, they would have reviewed the language of the corporation business tax pertaining to the net income of corporations. In doing so, they would have been reminded that since 1958 corporations had been assessed a corporation business tax in part on the basis of "total net income from all sources, whether within or without the United States, . . . determined without the . . . deduction . . . of . . . [t]axes paid or accrued to the United States *on or measured by profits or income* . . . ." *N.J.S.A.* 54:10A-4(k)(2)(C); emphasis supplied.

I am entirely satisfied, from the ordinary meaning of these words and from the public perception of the purpose of the windfall profit tax, that the legislators would have been reassured that no amendment of the statutory language was needed to protect the State's revenue source. The Legislature could hardly have been more precise in 1979 than it had been in 1958 to make clear that plaintiffs could not deduct the windfall profit tax when making their determination of entire net income pursuant to *N.J.S.A.* 54:10A-4(K)(2)(C).

Plaintiffs offer a prodigious amount of scholarly analysis to argue that the windfall profit tax is not, in fact, a tax on profits or income and that the name of the tax is a misnomer. Be that as it may, the point is that the Legislature surely perceived the windfall profit tax to

be a tax on profits or income and felt no need to amend the corporation business tax for that very reason. One cannot expect the Legislature to have a command of "the complex and often tortuous federal statutory scheme" of taxation. *See Fedders Financial Corp. v. Taxation Division Director, supra*, 96 *N.J.* at 405, 476 *A.*2d 741 (Handler, J., dissent).

For this very straightforward reason, I hold that the Legislature in 1979 intended to include the Crude Oil Windfall Profit Tax Act of 1980 within the term "[t]axes paid or accrued to the United States on or measured by profits or income" as stated in *N.J.S.A.* 54:10A-4(K)(2)(C). Accordingly, plaintiffs were not entitled to deduct their windfall profit tax obligations in determining their entire net income for 1980.

Plaintiffs contend that this conclusion creates various constitutional problems, primarily under the Commerce Clause, the Equal Protection and Due Process Clauses, and the Supremacy Clause of the United States Constitution. However, as the Attorney General observes, the premise of plaintiff's constitutional arguments is wrong. Plaintiffs allege that this decision means that the net income tax base varies among corporate taxpayers, but the question here is only whether plaintiffs may claim a deduction from their net income tax base, not whether there should be an addition to that portion of the tax base. This decision has no effect on the character of the income included in the tax base.

As a corollary of this, it is also incorrect for plaintiffs to argue that federal law determines the amount of a taxpayer's entire net income under the Corporation Business Tax Act. I subscribe fully to the construction of the act by Judge Andrew of this court, who has said:

> There is no support for the proposition that federal income tax concepts are the definitional source of the terms utilized in the New Jersey Act.
>
> * * * *

> While the starting point for determination of entire net income under the act is taxable income, before net operating loss deductions and special deductions, which the taxpayer is required to report for federal income tax purposes, the Corporation Business Tax deviates from the federal tax by providing its own inclusions and exclusions from the tax base. *N.J.S.A.* 54:10A-4(K). Only at the initial point is it indicated that the Legislature intended that federal standards were to be controlling. [*International Flavors and Fragances v. Taxation Division Director*, 5 *N.J. Tax* 617, 624 (Tax Ct. 1983), aff'd *o.b.* (App. Div. 1984)]

The deficiency assessments of the Director are therefore affirmed. The Clerk of the Tax Court shall enter appropriate judgments.

APPENDIX D

TAX COURT OF NEW JERSEY

Docket Nos. CB 064B-83,
CB 065B-83, CB 066B-83,
CB 067B-83, CB 068B-83,
CB 069B-83, CB 070B-83,
CB 071B-83, CB 072B-83,
CB 073B-83, CB 074B-83,
CB 075B-83, CB 077B-83,
CB 128B-83

AMERADA HESS CORPORATION, DIAMOND SHAMROCK CORPORATION, SHELL OIL COMPANY, CITIES SERVICE COMPANY, EXXON CORPORATION, ATLANTIC RICHFIELD COMPANY, UNION OIL COMPANY OF CALIFORNIA, MOBIL OIL CORPORATION, PHILLIPS PETROLEUM COMPANY, GULF OIL CORPORATION, CHEVRON U.S.A. INC., CONOCO INC., TEXACO, INC., TENNECO OIL COMPANY,
Plaintiffs,

v.

DIRECTOR, DIVISION OF TAXATION,
Defendant.

February 14, 1985

LARIO, J.T.C.

This is a consolidated motion filed by all plaintiffs for reconsideration of summary judgments entered by this court dismissing all plaintiffs' complaints. Plaintiffs, 14 taxpayers, originally filed complaints attacking determinations of defendant, Director, Division of Taxation (Director) whereby he denied their respective claims for deductions under the New Jersey Corporation Business Tax Act (CBT), *N.J.S.A.* 54:10A-1, *et seq.*

These complaints were assigned to Judge Richard M. Conley for hearing and determination. By reason of identity of legal issues, they were consolidated for hearing and since the material facts were not in dispute, motions for summary judgment were filed by all parties. In support of their respective motions, comprehensive pleadings, including thousands of pages of briefs, transcripts of depositions and affidavits were submitted by all parties and oral arguments were presented.

On September 28, 1984, Judge Conley issued his decision granting defendant's motion for summary judgment in each case affirming the deficiency assessments imposed against each of the plaintiffs. *Amerada Hess Corp. v. Taxation Div. Director*, 7 *N.J.Tax* 51 (Tax Ct 1984). Judgments to that effect as to all assessments levied for the taxable year 1980 were entered on October 5, 1984. Subsequently, corrected judgments were entered on October 16, 1984 as to five of the plaintiffs whose assessments for the taxable year 1981 were also contested.

Thereafter, within the time period permitted by our rules, all plaintiffs joined in motions for reconsideration. Shortly after rendering his decision, Judge Conley resigned as a judge of this court to resume the private practice of law and these motions were assigned to me to hear and determine.

In its brief opposing plaintiffs' motions the Director agrees with a request contained in plaintiffs' brief that the contested assessments in docket nos. CB 075B-83 (Conoco, Inc.) and CB 069B-83 (Atlantic Richfield Company) (tax year 1980 only) were reductions of refund claims, not deficiency assessments, and he joins in plain-

tiffs' request that these judgments be corrected accordingly. This motion is granted and the Clerk of the Tax Court is directed to issue corrected judgments.

Plaintiffs filed their motions pursuant to *R.* 4:49-1, *R.* 4:49-2, *R.* 4:50-1(f), *R.* 8:7(a) and *R.* 8:10, for the following relief: (1) reconsideration of the opinion of the Tax Court dated September 28, 1984, denying the motions of plaintiffs for summary judgment, granting the motion of defendant for summary judgments and dismissing the complaints of plaintiffs; (2) vacation of the judgment and corrected judgments dated October 5, 1984 and October 16, 1984 respectively, entered pursuant thereto, affirming the 1980, and, as applicable, 1981 assessments, and dismissing the complaints of plaintiffs; and, (3) entry of summary judgments in favor of plaintiffs for the relief requested in their respective complaints.

In his answering brief, defendant denies that *R.* 4:50-1(f), *R.* 8:7(a) and *R.* 8:10 are applicable for this type of motion. At oral argument plaintiffs agreed with Director's contentions and stated that they were relying upon *R.* 4:49-1 and -2 for the relief requested and that the other rules cited were not applicable.

R. 4:49-2 deals with a motion to "alter or amend" a judgment and it apparently covers cases such as here where no trial was held and since it sets forth no separate substantive standards, it is presumed that its standards are identical to those applicable to *R.* 4:49-1.

R. 4:49-1 specifies that in an action tried without a jury, on motion, the trial judge may open the judgment, take additional testimony, amend findings of fact and conclusions of law and direct the entry of judgment. It further provides: "The trial judge shall grant the motion if, having given due regard to the opportunity of the jury to pass upon the credibility of the witnesses, it

clearly and convincingly appears that there was a miscarriage of justice under the law." *Ibid.*

Although the "miscarriage of justice" standard refers to jury trials, it is clear that the standard also applies to motions in nonjury cases. *Quick Chek Food Stores v. Springfield Tp.* 83 *N.J.* 438, 445, 416 A.2d 840 (1980). Under this rule motions "are addressed to the sound discretion of the trial court and [that judgment] will not be disturbed unless that discretion has been clearly abused." *Id.* at 445-446, 416 *A.*2d 840.

The Supreme Court in *Quick Chek* also made it clear that the parallel federal rule (*Fed.R.Civ.P.* 59) may be considered as a guide for interpreting *R.* 4:49-1. *Id.* at 446, 416 *A.*2d 840. The Federal rule mandates that a motion for a new trial should be premised only upon a "manifest error of law", "manifest error of fact", or "newly discovered evidence." II *C. Wright and A. Miller, Federal Practice and Procedure* (1980) § 2804; *Pioneer Paper Stock Co. v. Miller Transport Co.*, 109 *F.Supp.* 502, 504 (D.N.J.1983).

From an examination of the reasons advanced in support of their motions it appears that plaintiff's main objections are their dissatisfaction with the judge's written opinion. Most of their arguments, raised in their supporting briefs and presented orally, are directed against the opinion's content, brevity and failure to discuss certain issues and not against the judge's conclusion and final judgment. They complain of the court's alleged failure to comment upon most of the evidence submitted and to address many of the arguments presented.

Plaintiffs advise that regardless of which party prevails in this court, an appeal will be taken to the Appellate Division and probably will be further pursued to the Supreme Court. One of the objections, in support of this motion, raised by one plaintiff is that although their

positions were fully presented and exhaustively briefed, each was not specifically discussed and commented upon in the opinion; and, that on appeal, this failure is not fair to the plaintiffs nor to the Appellate Division. The basis for this position was that even though the appellate court would have the benefit of the record and appellate briefs, to require the appellate judges to examine these voluminous pleadings and to consider "ail the merits from scratch" would be an imposition upon an Appellate Division which is "overworked" and entitled to the full benefits of the Tax Court's expertise which would have appeared in a much more comprehensive and detailed opinion.

This position as a basis for a reconsideration is completely unsupported by any legal authority. It is clear that appeals may not be taken from opinions; they may be taken only from judgments. *R.* 2:2-3(a)(1). As declared by our Supreme Court, "He [the appellant] voices dissatisfaction with the opinion of the Appellate Division. Appeals, however, are taken from judgments and not from opinions." *Hughes v. Eisner*, 8 *N.J.* 228, 229, 84 *A.*2d 626 (1951). "It has long and invariably been recognized, in particular, that no appeal lies from opinions or from written oral conclusions of courts, but only from judgment or orders." *Credit Bureau Collection Agency v. Lind*, 71 *N.J. Super.* 326, 328, 177 *A.*2d 36 (App. Div. 1961); *Melhame v. Demarest Boro.*, 174 *N.J. Super.* 28, 31, 415 *A.*2d 358 (App. Div. 1980); *cf. Seabrook Co. v. Beck*, 174 *N.J. Super.* 577, 584, 417 *A.*2d 89 (App. Div. 1980). "Appeals are taken from judgments not opinions and . . . a respondent can argue any point on the appeal to sustain the trial court's judgment. *State v. Siciliano*, 21 *N.J.* 249, 260 [121 *A.*2d 490] (1956)." *Chimes v. Oritano Motor Hotel, Inc.* 195 *N.J. Super.* 435, 443, 480 *A.*2d 218 (App. Div. 1984).

In deciding a motion for summary judgment, where as here, the material facts are not in dispute, the trial

judge should concisely and lucidly identify the legal issues involved and give a clear pronouncement of the ultimate conclusion and reasons therefor. This, Judge Conley has done. It was neither required nor necessary for the court to have discussed at length and responded to all of the many issues and principles of law raised in the parties' extensive briefs where, as here, only one narrow legal issue (albeit important) was determined by the court to exist. Once having determined the issue to be decided, only such essential facts, reasoning and conclusions as applied by him to that particular issue were required to be documented. I hold that plaintiffs' objections to the format, brevity and alleged omissions of the opinion have no merit on a motion for a new trial and do not warrant further consideration.

Since the motions do not allege a "manifest error of fact" and they are not based upon an evidence question, as are usually the basis for motions under this rule, in order for a reconsideration motion to be granted under *R.* 4:49-1, it must be established clearly and convincingly that the trial judge's conclusion was based upon a "manifest error of law" which will result in a "miscarriage of justice."

Since the "miscarriage of justice" standard applies to nonjury actions it is also applicable to completed nonjury actions reassigned to another trial judge such as occurred here. However, it is manifest that in considering this motion, I am not sitting as an appellate court. I am on the same judicial level as the origial trial judge; therefore, I may not substitute my interpretation of the Legislature's intent for his. The test is not whether I would have arrived at a different conclusion had I heard the matter initially.

Plaintiffs concede the dispute between the parties is, as stated by Judge Conley: ". . . whether in computing their entire net income on which the New Jersey Corpo-

ration Business Tax is in part assessed, these taxpayers may exclude or deduct the amount of any taxes paid or accrued to the federal government under the Crude Oil Windfall Profit Tax Act of 1980, 94 *Stat.* 229, 26 *U.S.C.A.* §§ 4986-4997." *Amerada Hess Corp. v. Taxation Div. Director, supra*, 7 *N.J. Tax* at 53. They further concede that he correctly concluded that the resolution thereof is controlled by the statutory construction of the seven words of subsection (C): "taxes paid or accrued to the United States *on or measured by profits or income* . . ." as contained in the definition of "entire net income" found in *N.J.S.A.* 54:10A-4(k)(2)(C)." *Id.* at 56; emphasis in original.

The net income provision of this statute was added to the CBT in 1958. Since the Crude Oil Windfall Profit Tax Act (WPT) had not been enacted by Congress until 1980, in determining the Legislature's intent in adopting the statutory words in dispute, Judge Conley relied upon the principle of probable legislative intent (of the 1958 Legislature) had it anticipated the facts herein.

After analyzing the facts and circumstances of the situation, Judge Conley was satisfied and concluded "from the ordinary meaning" of the words contained in *N.J.S.A.* 54:10A-4(k)(2)(C) and "from the public perception of the purpose of the WPT" that the Legislature in 1979 by not amending this section of the CBT "intended to include the Crude Oil Windfall Profit Tax Act of 1980 within the term "[t]axes paid or accrued to the United States on or measured by profits or income" as stated in *N.J.S.A.* 54:10A-4(k)(2)(C)." *Id.* at 56-57.

In their motions for reconsideration plaintiffs allege that the court's final judgment is erroneous as a matter of law since

> in holding that the WPT is a tax "on or measured by profits or income" within the meaning of *N.J.S.A.* 54:10A-4(k)(2)(C), the Tax Court (i) ignored the ordinary and generally accepted meanings of the terms "income" and "profits" and their accepted senses under general tax law, as delineated by commentators and courts, both Federal and State [footnote omitted], (ii) made no mention whatsover of the use of the terms "income" and "profits" in the definition of "entire net income" in *N.J.S.A.* 54:10A(k) and the relationship between those terms so used, and their uses in *N.J.S.A.* 54:10A4(k)(2)(C), (iii) summarily dismissed as irrelevant the only available legislative history concerning the "entire net income" base of the CBT, namely, that relating to the objective of our Legislature in adding that base to the CBT in 1958, and (iv) disavowed any felt need to even consider the nature and structure of the WPT, much less "the intricacies" of that tax.

In arriving at his conclusion on the first error alleged by (i) above, the judge reasoned that it was not determinative whether the WPT *was in fact* a tax on or measured by profits or income; but instead what the Legislature perceived it to be. Plaintiffs have failed to submit any legal authority (and this court's extensive research has also failed to disclose any) to establish that Judge Conley's analysis of the Legislature's intention on this issue is clearly erroneous as a matter of law.

Plaintiffs further claim that the trial judge's reliance on the principle of "probable legislative intent" and utilizing "legislative silence" in his analysis and interpretation of the CBT constitutes error as a matter of law. They state that the court's determination of what was the 1979 and 1980 Legislature's probable intent on this issue is unsupported by legal authority.

Statutory words cover many diverse instances which cannot be foreseen, therefore, their interpretation is necessarily an imaginative projection of the express purposes upon situations arising later for which the Legisla-

ture did not expressly provide. As expressed by Professor Walker Gibson, a member of the faculty of New York University Law School at a seminar for appellate judges:

> In the case of the legislature's intention the difficulty is that time has gone barreling on long after the legislature has spoken, and new situations have arisen about which the legislature clearly never had any intention at all. The question then becomes rephrased into something like, "What *would* the legislature have intended *if* the legislature had known what was going to happen?" Gibson, "Literary Minds and Judicial Style," 36 *N.Y.U.L. Rev.* 915, 920 (1961).

When the judiciary is called upon to interpret the meaning of a statute in such a situation, it does not substitute its will for the legislative will but rather in the consideration of all the material elements reaches the result probably intended by the Legislature. *Dorkin v. Dover Tp.*, 29 *N.J.* 303, 315, 148 *A.*2d 793 (1959). The statutory construction required thereby is referred to as "probable legislative intent." The application of this doctrine was recently set forth by our Supreme Court in *AMN, Inc. v. So. Bruns. Tp. Rent Leveling Bd.*, 93 *N.J.* 518, 461 *A.*2d 1138 (1983) as follows:

> Generally, a court's duty in construing a statute is to determine the intent of the Legislature. In cases such as this, where it is clear that the drafters of a statute did not consider or even contemplate a specific situation, this Court has adopted as an established rule of statutory construction the policy of interpreting the statute "consonant with the probable intent of the draftsman 'had he anticipated the situation at hand.'" [citations omitted] Such an interpretation will not "turn on literalisms, technisms or the so-called rules of interpretation; [rather] it will justly turn on the breadth of the objectives of the legislation and the commonsense of the situation." *J.C. Chap. Prop Owner's Protective Ass'n v. City Council of Jersey City*, 55 *N.J.* [86] at 100 [259 *A.*2d 698 (1969)] [At 525, 461 *A.*2d 1138].

Judge Conley, after analyzing what he perceived to be the "commonsense of the situation" interpreted the Legislature's failure to amend our CBT after the federal enactment of WPT as an indication by our Legislature that "it perceived the windfall profit tax to be a tax on profits or income and felt no need to amend the Corporation Business Tax for that very reason." *Amerada Hess Corp., supra*, 7 *N.J. Tax* at 56.

In further criticizing the trial judge's interpretation of the Legislature's probable intent, plaintiffs allege that the "significance attributed by the court to Legislative inactivity" is "flatly inconsistent with binding precedent." I do not find that the decisions cited so hold. In each of the cases presented by plaintiffs, no definite judicial interpretation or legislative act intervened between the adoption of the statute being interpreted and the claimed legislative silence. In such situations, as plaintiffs have correctly stated, our courts have held there is nothing in which the Legislature could acquiesce; but, in the case under review, the trial court found as a fact that there was something definite to which the New Jersey Legislature could have reacted—the federal enactment of the WPT. This distinction is pointed out in *White v. N. Bergen Tp.*, 77 *N.J.* 538, 555, 391 *A.*2d 911 (1978). In arriving at his finding concerning the Legislatures' inaction, Judge Conley explicitly considered the wide publicity given to the adoption of the WPT.

In *White, supra*, Chief Justice Hughes also made it clear that although legislative silence is not conclusive, it may be significant. *Id.* at 555, 391 *A.*2d 911. In reaching his final conclusion of the intent of the 1955

Legislature, Judge Conley did not accept the 1979-1980 Legislature's silence as conclusive but instead took it into consideration in interpreting that intent.

Plaintiffs disagree with the significance and reliance that the trial court placed upon the Legislature's inactivity on this subject and the court's reasoning and conclusions as to the 1955 Legislature's probable intent; they claim it to be erroneous. However, whether it is erroneous and subject to reversal by an appellate court is not the test before me. As previously posited: Is it, as required by *R.* 4:49-1 and interpreted by *Quick Chek, supra*, clearly and convincingly a manifest error as a matter of law? Plaintiffs have cited many cases which they claim support their position but I find from an analysis of each that none supports their claim that Judge Conley's judicial interpretation of the Legislature's silence and probable intent is incorrect as a matter of law.

It is recognized that trial court judges are not infallible and on appeal their orders and judgments may be reversed and, at times, the reversal is reversed. Strictly, every reversal by an upper court is a determination that the lower court's conclusion constituted an error as a matter of law; however, every erroneous conclusion is not necessarily clear or a "manifest" error. Manifest is defined as "1. readly perceived by the sight; 2. easily understood or recognized by the mind: obvious." *Webster's New Collegiate Dictionary* (9 ed. 1983) at 724.

The precise legal issue presented to the trial court had never before been passed upon by a court of record in this State; therefore, there exists no guiding prior determination. Judge Conley was required to examine the statute, dissect and analyze its meaning and conclude the intent of the seven words in issue. Based upon his analysis of the statute, Judge Conley concluded that plaintiffs were not entitled to deduct their WPT obligations in

determining their entire net income. Plaintiffs disagree with his conclusion.

Since there has been no prior court decision on this issue, it cannot be said that his conclusion is clearly a manifest error as a matter of law. Whether, on appeal, our appellate courts will ultimately affirm Judge Conley's judgment is a matter for future determination. It has often been said in judicial circles that "an occupational hazard of a judge is that he may be wrong" but that wrong does not necessarily constitute "manifest error." As aptly stated by Judge Charles M. Merrill of the Ninth Circuit, United States Court of Appeals:

> To an appellate judge, dealing with principles of law rather than with physical facts, what is "right" and what is "wrong" is largely a question of opinion. There is very little that is absolute. When one is declared "wrong" by a majority of one's brothers or by a higher court it can often be said simply that there is a difference of opinion. Personally I do not see why any greater opprobruim should attend reversal by a higher court than attends the filing of a dissenting opinion. In either case all that is revealed is that opinions differ and that upon this difference one is in the minority. And whenever there is difference someone must be in the minority; and if there were no room for difference there would be little need for appellate courts. [Merrill, "Some Reflections on the Business of Judging," 40 *Cal. St. B.J.* 811, 814 (1965)]

I conclude that plaintiffs have failed to establish the existence of either a manifest error of law or a miscarriage of justice as required by *R.* 4:49-1 or -2. Motions for reconsideration are denied.

APPENDIX E

IN THE SUPREME COURT OF
THE STATE OF NEW JERSEY

Docket No. 25,264

Civil Action

AMERADA HESS CORPORATION,
Appellant,

—vs—

JOHN R. BALDWIN, ACTING DIRECTOR,
DIVISION OF TAXATION,
NEW JERSEY DEPARTMENT OF THE TREASURY,
Appellee.

[Received Aug. 20, 1987]

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

NOTICE IS HEREBY GIVEN that Amerada Hess Corporation, the Appellant above named, hereby appeals to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of New Jersey entered in this action on June 22, 1987, reversing the judgment of the New Jersey Superior Court, Appellate Division, and reinstating the judgment of the New Jersey Tax Court (i) denying the motion of Appellant for summary judgment, (ii) granting the cross-motion of Appellee for summary judgment and, pursuant thereto (iii) dismissing the complaint of Appellant.

This appeal is taken pursuant to 28 U.S.C. Sec. 1257(2).

WILENTZ, GOLDMAN & SPITZER
A Professional Corporation

By: /s/ Frederic K. Becker
FREDERIC K. BECKER
Counsel for Appellant

WILENTZ, GOLDMAN & SPITZER
A Professional Corporation
900 Route 9, P.O. Box 10
Woodbridge, New Jersey 07095
201-636-8000
Counsel for Appellant

Dated: August 20, 1987

[Certificate of Service omitted]

IN THE SUPREME COURT OF
THE STATE OF NEW JERSEY

Docket No. 25.277

Civil Action

ATLANTIC RICHFIELD COMPANY,
Appellant,

—vs—

DIRECTOR, DIVISION OF TAXATION,
Appellee.

[Received Aug. 20, 1987]

NOTICE OF APPEAL TO THE SUPREME COURT
OF THE UNITED STATES

NOTICE IS HEREBY GIVEN that Atlantic Richfield Company, the Appellant above-named, HEREBY APPEALS to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of New Jersey entered in this action on June 22, 1987, reversing the judgment of the New Jersey Superior Court, Appellate Division, and reinstating the judgment of the New Jersey Tax Court (i) denying the motion of Appellant for summary judgment, (ii) granting the cross-motion of Appellee for summary judgment and, pursuant thereto, (iii) dismissing the complaint of Appellant.

This appeal is taken pursuant to 28 U.S.C. § 1257(2).

STRYKER, TAMS & DILL

By: /s/ Charles M. Costenbader
CHARLES M. COSTENBADER
Counsel for Appellant

STRYKER, TAMS & DILL
33 Washington Street
Newark, New Jersey 07102
(201) 624-9300
Counsel for Appellant

Dated: August 20, 1987

[Certificate of Service omitted]

IN THE SUPREME COURT OF
THE STATE OF NEW JERSEY

Docket No. 25,272

Civil Action

CHEVRON U.S.A. INC.,
Appellant,

—vs—

DIRECTOR, DIVISION OF TAXATION,
Appellee.

[Received Aug. 20, 1987]

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

NOTICE IS HEREBY GIVEN that Chevron U.S.A. Inc., the Appellant above-named, HEREBY APPEALS to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of New Jersey entered in this action on June 22, 1987, reversing the judgment of the New Jersey Superior Court, Appellate Division, and reinstating the judgment of the New Jersey Tax Court (i) denying the motion of Appellant for summary judgment, (ii) granting the cross-motion of Appellee for summary judgment and, pursuant thereto, (iii) dismissing the complaint of Appellant.

This appeal is taken pursuant to 28 U.S.C. § 1257(2).

STRYKER, TAMS & DILL

By: /s/ Charles M. Costenbader
CHARLES M. COSTENBADER
Counsel for Appellant

STRYKER, TAMS & DILL
33 Washington Street
Newark, New Jersey 07102
(201) 624-9300
Counsel for Appellant

Dated: August 20, 1987

[Certificate of Service omitted]

IN THE SUPREME COURT OF
THE STATE OF NEW JERSEY

Docket No. 25,275

Civil Action

CITIES SERVICE COMPANY,
Appellant,

—vs—

DIRECTOR, DIVISION OF TAXATION,
Appellee.

[Received Aug. 20, 1987]

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

NOTICE IS HEREBY GIVEN that Cities Service Company, the Appellant above-named, HEREBY APPEALS to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of New Jersey entered in this action on June 22, 1987, reversing the judgment of the New Jersey Superior Court, Appellate Division, and reinstating the judgment of the New Jersey Tax Court (i) denying the motion of Appellant for summary judgment, (ii) granting the cross-motion of Appellee for summary judgment and, pursuant thereto, (iii) dismissing the complaint of Appellant.

This appeal is taken pursuant to 28 U.S.C. § 1257(2).

STRYKER, TAMS & DILL

By: /s/ Charles M. Costenbader
CHARLES M. COSTENBADER
Counsel for Appellant

STRYKER, TAMS & DILL
33 Washington Street
Newark, New Jersey 07102
(201) 624-9300
Counsel for Appellant

Dated: August 20, 1987

[Certificate of Service omitted]

IN THE SUPREME COURT OF
THE STATE OF NEW JERSEY

Docket No. 25,276

Civil Action

CONOCO INC.,

Appellant,

—vs—

DIRECTOR, DIVISION OF TAXATION,

Appellee.

[Received Aug. 20, 1987]

NOTICE OF APPEAL TO THE SUPREME COURT
OF THE UNITED STATES

NOTICE IS HEREBY GIVEN that Conoco Inc., the Appellant above-named, HEREBY APPEALS to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of New Jersey entered in this action on June 22, 1987, reversing the judgment of the New Jersey Superior Court, Appellate Division, and reinstating the judgment of the New Jersey Tax Court (i) denying the motion of Appellant for summary judgment, (ii) granting the cross-motion of Appellee for summary judgment and, pursuant thereto, (iii) dismissing the complaint of Appellant.

This appeal is taken pursuant to 28 U.S.C. § 1257(2).

STRYKER, TAMS & DILL

By: /s/ Charles M. Costenbader
CHARLES M. COSTENBADER
Counsel for Appellant

STRYKER, TAMS & DILL
33 Washington Street
Newark, New Jersey 07102
(201) 624-9300
Counsel for Appellant

Dated: August 20, 1987

[Certificate of Service omitted]

IN THE SUPREME COURT OF
THE STATE OF NEW JERSEY

Docket No. 25,274

Civil Action

EXXON CORPORATION,
Appellant,

—VS—

DIRECTOR, DIVISION OF TAXATION,
Appellee.

[Received Aug. 20, 1987]

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

NOTICE IS HEREBY GIVEN that Exxon Corporation, the Appellant above-named, HEREBY APPEALS to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of New Jersey entered in this action on June 22, 1987, reversing the judgment of the New Jersey Superior Court, Appellate Division, and reinstating the judgment of the New Jersey Tax Court (i) denying the motion of Appellant for summary judgment, (ii) granting the cross-motion of Appellee for summary judgment and, pursuant thereto, (iii) dismissing the complaint of Appellant.

This appeal is taken pursuant to 28 U.S.C. § 1257(2).

STRYKER, TAMS & DILL

By: /s/ Charles M. Costenbader
CHARLES M. COSTENBADER
Counsel for Appellant

STRYKER, TAMS & DILL
33 Washington Street
Newark, New Jersey 07102
(201) 624-9300
Counsel for Appellant

Dated: August 20, 1987

[Certificate of Service omitted]

IN THE SUPREME COURT OF
THE STATE OF NEW JERSEY

Docket No. 25,269

Civil Action

GULF OIL CORP.,
Appellant,

—vs—

DIRECTOR, DIVISION OF TAXATION,
Appellee.

[Received Aug. 20, 1987]

NOTICE OF APPEAL TO THE SUPREME COURT
OF THE UNITED STATES

NOTICE IS HEREBY GIVEN that Gulf Oil Corp., the Appellant above-named, HEREBY APPEALS to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of New Jersey entered in this action on June 22, 1987, reversing the judgment of the New Jersey Superior Court, Appellate Division, and reinstating the judgment of the New Jersey Tax Court (i) denying the motion of Appellant for summary judgment, (ii) granting the cross-motion of Appellee for summary judgment and, pursuant thereto, (iii) dismissing the complaint of Appellant.

This appeal is taken pursuant to 28 U.S.C. § 1257(2).

STRYKER, TAMS & DILL

By: /s/ Charles M. Costenbader
CHARLES M. COSTENBADER
Counsel for Appellant

STRYKER, TAMS & DILL
33 Washington Street
Newark, New Jersey 07102
(201) 624-9300
Counsel for Appellant

Dated: August 20, 1987

[Certificate of Service omitted]

IN THE SUPREME COURT OF
THE STATE OF NEW JERSEY

Docket No. 25,271

Civil Action

MOBIL OIL CORP.,
Appellant,

—vs—

DIRECTOR, DIVISION OF TAXATION,
Appellee.

[Received Aug. 20, 1987]

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

NOTICE IS HEREBY GIVEN that Mobil Corp., the Appellant above-named, HEREBY APPEALS to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of New Jersey entered in this action on June 22, 1987, reversing the judgment of the New Jersey Superior Court, Appellate Division, and reinstating the judgment of the New Jersey Tax Court (i) denying the motion of Appellant for summary judgment, (ii) granting the cross-motion of Appellee for summary judgment and, pursuant thereto, (iii) dismissing the complaint of Appellant.

This appeal is taken pursuant to 28 U.S.C. § 1257(2).

STRYKER, TAMS & DILL

By: /s/ Charles M. Costenbader
CHARLES M. COSTENBADER
Counsel for Appellant

STRYKER, TAMS & DILL
33 Washington Street
Newark, New Jersey 07102
(201) 624-9300
Counsel for Appellant

Dated: August 20, 1987

[Certificate of Service omitted]

IN THE SUPREME COURT OF
THE STATE OF NEW JERSEY

Docket No. 25,273

Civil Action

PHILLIPS PETROLEUM COMPANY,
Appellant,

—vs—

DIRECTOR, DIVISION OF TAXATION,
Appellee.

[Received Aug. 20, 1987]

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

NOTICE IS HEREBY GIVEN that Phillips Petroleum Company, the Appellant above-named, HEREBY APPEALS to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of New Jersey entered in this action on June 22, 1987, reversing the judgment of the New Jersey Superior Court, Appellate Division, and reinstating the judgment of the New Jersey Tax Court (i) denying the motion of Appellant for summary judgment, (ii) granting the cross-motion of Appellee for summary judgment and, pursuant thereto, (iii) dismissing the complaint of Appellant.

This appeal is taken pursuant to 28 U.S.C. § 1257(2).

STRYKER, TAMS & DILL

By: /s/ Charles M. Costenbader
CHARLES M. COSTENBADER
Counsel for Appellant

STRYKER, TAMS & DILL
33 Washington Street
Newark, New Jersey 07102
(201) 624-9300
Counsel for Appellant

Dated: August 20, 1987

[Certificate of Service omitted]

IN THE SUPREME COURT OF
THE STATE OF NEW JERSEY

Docket No. 25,268

Civil Action

SHELL OIL COMPANY,
Appellant,

—vs—

DIRECTOR, DIVISION OF TAXATION,
Appellee.

[Received Aug. 20, 1987]

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

NOTICE IS HEREBY GIVEN that Shell Oil Company, the Appellant above-named, HEREBY APPEALS to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of New Jersey entered in this action on June 22, 1987, reversing the judgment of the New Jersey Superior Court, Appellate Division, and reinstating the judgment of the New Jersey Tax Court (i) denying the motion of Appellant for summary judgment, (ii) granting the cross-motion of Appellee for summary judgment and, pursuant thereto, (iii) dismissing the complaint of Appellant.

This appeal is taken pursuant to 28 U.S.C. § 1257(2).

STRYKER, TAMS & DILL

By: /s/ Charles M. Costenbader
CHARLES M. COSTENBADER
Counsel for Appellant

STRYKER, TAMS & DILL
33 Washington Street
Newark, New Jersey 07102
(201) 624-9300
Counsel for Appellant

Dated: August 20, 1987

[Certificate of Service omitted]

IN THE SUPREME COURT OF
THE STATE CF NEW JERSEY

Docket No. 25,270

Civil Action

UNION OIL COMPANY OF CALIFORNIA,
Appellant,

—vs—

DIRECTOR, DIVISION OF TAXATION,
Appellee.

[Received Aug. 20, 1987]

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

NOTICE IS HEREBY GIVEN that Union Oil Company of California, the Appellant above-named, HEREBY APPEALS to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of New Jersey entered in this action on June 22, 1987, reversing the judgment of the New Jersey Superior Court, Appellate Division, and reinstating the judgment of the New Jersey Tax Court (i) denying the motion of Appellant for summary judgment, (ii) granting the cross-motion of Appellee for summary judgment and, pursuant thereto, (iii) dismissing the complaint of Appellant.

This appeal is taken pursuant to 28 U.S.C. § 1257(2).

STRYKER, TAMS & DILL

By: /s/ Charles M. Costenbader
CHARLES M. COSTENBADER
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STRYKER, TAMS & DILL
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(201) 624-9300
Counsel for Appellant

Dated: August 20, 1987

[Certificate of Service omitted]

APPENDIX F

TABLE OF AMOUNTS AT ISSUE FOR 1980 AND 1981

	1980				1981			
Company	N.J. CBT Liability Excluding WPT Payments	N.J. CBT Liability After Add-Back of WPT Payments	Additional Tax Liability Attributable to WPT Add-Back	Percentage Increase in Tax Burden	N.J. CBT Liability Excluding WPT Payments	N.J. CBT Liability After Add-Back of WPT Payments	Additional Tax Liability Attributable to WPT Add-Back	Percentage Increase in Tax Burden
Amerada Hess	$10,852,307	$12,504,242	$1,651,935	15%	$ 864,208	$ 7,561,840	$ 6,697,632	775%
Atlantic Richfield	$ 1,275,921	$ 1,633,808	$ 357,887	28%	$ 477,001	$ 1,309,033	$ 832,032	174%
Chevron	$ 5,825,582	$ 6,947,422	$1,121,840	19%				
Cities Service	$ 1,344,049	$ 1,618,395	$ 274,346	20%	—0—	$ 912,204	$ 912,204	∞
Conoco	$ 385,665	$ 523,399	$ 137,734	36%				
Exxon	$15,314,745	$19,038,950	$3,724,205	24%				
Gulf	$ 638,411	$ 997.987	$ 59,576	56%	$ 112,834	$ 1,356,153	$ 1,243,319	1102%
Mobil	$ 1,711,268	$ 2,235,947	$ 524,679	31%				
Phillips	$ 170,593	$ 195,684	$ 25,091	15%				
Shell	$ 2,749,654	$ 3,509,330	$ 759,676	28%	$3,039,560	$ 5,031,746	$ 1,992,186	66%
Union	$ 315,124	$ 384,965	$ 69,841	22%				
Total	$40,583,319	$49,590,129	$9,006,810	22%	$4,493,603	$16,170,976	$11,677,373	260%

Source: The figures in this table were derived from the complaints, assessment notices, and final determination letters contained in the record.

APPENDIX G

SUMMARY OF STATE TAX SCHEMES DENYING DEDUCTION FOR WINDFALL PROFIT TAX PAYMENTS

1. *Georgia.* The state code provides that "[e]very domestic corporation and every foreign corporation shall pay annually an income tax" on "its Georgia taxable net income." Ga. Code Ann. § 48-7-21(a) (Supp. 1987). Where a corporation conducts business both within and without the state, Georgia taxes that "portion of [its] net income . . . attributable to property owned or business done within [the] state" as determined in accordance with a three-factor (property, payroll, and gross receipts) formula. § 48-7-31(d)(2).

Georgia bases its definition of "taxable net income" on the federal scheme. Under the state code, a "corporation's taxable income from property owned or from business done in [the] state shall consist of the corporation's taxable income as defined in the Internal Revenue Code of 1986, with [specified] adjustments." § 48-7-21(a). One such adjustment requires an add-back of various taxes, including "any taxes on, or measured by, net income or net profits paid or accrued within the taxable year imposed by the authority of the United States . . . to the extent such taxes are deducted in determining federal taxable income." § 48-7-21(b)(2).

Georgia tax administrators have taken the audit position that the WPT is a tax "on, or measured by, net income or net profits" deductible for federal tax purposes and that WPT payments must therefore be added back to the federal tax base to determine "taxable net income" under the state code.

2. *Iowa.* The state taxes the "net income" of "each [domestic] corporation" and "every foreign corporation

doing business in [the] state." Iowa Code § 422.33 (1971 & Supp. 1987). The state code uses a single-factor (gross sales) formula to apportion to Iowa a share of the net income of a corporation doing business both within and without the state. § 422.33.2(b)(4). Under the state code, the "term 'net income' means the taxable income before the net operating loss deduction, as properly computed for federal income tax purposes under the Internal Revenue Code," with specified "adjustments." § 422.35.

In 1982, the state amended the code, retroactive to tax years beginning on or after January 1, 1981, and expanded its list of "adjustments." Pursuant to that amendment's plain language as requiring an add-back under section 164(a) of the Internal Revenue Code" must be added to federal taxable income for purposes of computing net income subject to the Iowa corporate tax. § 422.35.10.

In *Shell Oil Co. v. Bair*, No. CL 47-27321 (Iowa Dist. Ct. Nov. 19, 1986), a state district court construed the amendment's plan language as requiring an add-back only when the taxpayer had deducted WPT payments under I.R.C. § 164(a) in determining federal taxable income. By contrast, if the taxpayer included its WPT payments as part of its "cost of goods sold" under I.R.C. § 471, the WPT payments need not be added back. While upholding Shell's position on statutory grounds, the court in a companion case rejected its constitutional attack on the add-back of WPT payments. *Shell Oil Co. v. Blair*, No. CL 062-36611 (Iowa Dist. Ct. Nov. 19, 1986).

The state has appealed the statutory construction ruling, and Shell has appealed the constitutional determination, to the Iowa Supreme Court. *Shell Oil Co. v. Bair*, Nos. 86-1731 (constitutional issue) and 86-1747 (statutory issue) (Iowa Sup. Ct., argued Sept. 17, 1987).

3. *Minnesota.* The state imposes a "privilege and income" tax on the "taxable net income" of foreign and domestic corporations doing business in the state. Minn. Stat. § 290.06(1) (1962 & Supp. 1987). The definition of "taxable net income" is not keyed to the federal scheme. "The term 'net income' means the [corporation's] gross income" minus "the deductions allowed by section 290.09" of the state code. § 290.01(19)(a). The "taxable net income from a trade or business carried on partly within and partly without [the] state shall be computed by deducting from the gross income of such business, wherever derived, deductions of the kind permitted by section 290.09." § 290.19(1). "The remaining net income shall be apportioned to Minnesota" based on a three-factor (property, payroll, and gross receipts) formula. § 290.19(1).

In computing taxable net income, a deduction from gross income is permitted for "[t]axes paid or accrued within the taxable year, *except* . . . (c) federal income taxes (including the windfall profit tax on domestic crude oil)." § 290.09(4) (emphasis added). The state added the parenthetical language prohibiting the deduction of WPT payments in 1981. 1981 Minn. Laws Ch. 60, § 8. The amendment was made effective retroactively as of March 1, 1980 (the effective date of the WPT) for all taxable years ending after that date.

4. *New York.* The state franchise tax is computed "upon the basis of [a corporation's] entire net income." N.Y. Tax Law § 209.1 (McKinney 1986). For corporations doing business both within and without New York, the state's income share is determined by multiplying the corporation's "entire net income" by a three-factor (property, payroll, and gross receipts) formula. § 210.3(a).

"The term 'entire net income' means total net income from all sources, which shall be presumably the same as

the entire taxable income which the taxpayer is required to report to the United States treasury department . . . ." § 208.9. For state franchise tax purposes, however, "[e]ntire net income shall be determined without the exclusion, deduction or credit of . . . taxes on or measured by profits or income paid or accrued to the United States." § 208.9(b)(3). The New York State Tax Commission, in an "Opinion of Counsel," has ruled that the WPT is a tax on or measured by profits and that, as a consequence, WPT payments cannot be deducted in computing the state tax base. TSB-M-82(22)C, Corporation Tax (July 12, 1982), *reprinted in* 1 N.Y. St. & Loc. Tax. Serv. (P.H.) ¶ 13,229; 1 N.Y. St. Tax Rep. (CCH) ¶ 9-909.

5. *North Dakota.* The state imposes a tax on the "taxable income" of corporations doing business there, as apportioned to North Dakota by a four-factor (property, payroll, gross sales, cost of goods sold) formula. N.D. Cent. Code § 57-38 (1981 & Supp. 1987). " 'Taxable income' . . . shall mean the taxable income . . . for federal income tax purposes under the United States Internal Revenue Code of 1954, as amended, plus or minus such adjustments as may be provided by this act and chapter or other provisions of law." § 57-38-01.8. In computing North Dakota taxable income, a corporation's federal taxable income must be "[i]ncreased by the amount of any income taxes . . . to the extent that such taxes were deducted to determine federal taxable income." § 57-38-01.3.1(d).

For the initial year of the WPT's effectiveness, the state enacted a special statute governing the state tax treatment of WPT payments. It provided: "As to individuals, estates, trusts, and corporations, the crude oil windfall profit tax . . . shall be allowable as a deduction in computing taxable income for the first taxable year only, beginning on or after January 1, 1980; provided that the deduction for a corporation shall not

exceed one million dollars." Former § 57-38-01.21(a) N. Dak. St. Tax Rep. [CCH] ¶ 11-018. For subsequent tax years, the state has apparently allowed taxpayers to treat WPT payments as fully deductible from the state's tax base. Moreover, because North Dakota has not treated the WPT as an "income" tax, WPT payments have not been subject to the state's add-back provision, which applies to "income taxes" or "franchise or privilege taxes measured by income." § 57-38-01.3(d). As a practical matter, therefore, the only limit that North Dakota has placed on the deductibility of WPT payments is the $1 million cap applicable to corporations in 1980.

6. *South Carolina.* With respect to a multistate enterprise conducting business within South Carolina, the state imposes a tax on the portion of its "entire net income" that "reasonably represents the proportion of the trade or business carried on within [the] State." S.C. Code Ann. §§ 12-7-230, 12-7-250 (Law. Co-op. 1977 & Supp. 1986). The state uses a three-factor (property, payroll, and gross receipts) formula to derive an apportioned share of the business's "entire net income." *See* S.C. State Tax Commission Regulation 117-87.17.

Beginning in 1985, South Carolina's corporate tax definitions are based on the federal system. Before that, the state code defined "net income" as "the gross income of a taxpayer less the deductions allowed by this chapter." § 12-7-600 (Law. Co-op. 1977), *repealed by* South Carolina Income Tax Federal Conforming Amendments of 1985, § 22 (May 21, 1985). Former section 12-7-700 specified the allowable deductions from "gross income." It provided in relevant part: "In computing net income there shall be allowed as deductions . . . [t]axes for the income year in the amount allowed for Federal Tax purposes, under § 164 of the Internal Revenue Code in effect as of December 31, 1980, except taxes on income,

taxes with respect to income or taxes measured by income."

Even before the 1985 legislation, the South Carolina courts generally followed federal precedent and viewed federal and state concepts of income as analogous. *See, e.g., Scott v. Tax Commission*, 262 S.C. 144, 202 S.E.2d 854, 855 (1974). Since 1985, "South Carolina gross income and taxable income of a corporation" has been expressly defined as "the corporation's gross income and taxable income as determined under the Internal Revenue Code with [specified] modification." § 12-7-415 (Law. Co-op. Supp. 1986). The state code provides that the "deductions used in computing adjusted gross income and taxable income" for federal tax purposes must be "modified" in several respects. § 12-7-430(d). On such modification specifies that "there is no deduction for . . . any income taxes, or any taxes measured by or with respect to net income." § 12-7-430(d)(1).

In 1982, the South Carolina Attorney General issued an opinion on the deductibility of WPT payments. Relying on South Carolina case law that all "ambiguity" must be resolved against the taxpayer, the Attorney General concluded that the "windfall profit tax is . . . a tax with respect to income" because it "focuses on specific profits" and that WPT payments therefore "may not be deducted in computing net income." 82 Op. Att'y Gen. No. 13 (Mar. 10, 1982). Based on that opinion, the state does not allow a deduction for WPT payments.

6. *Wisconsin.* The state imposes a franchise tax on the "entire net income" of any corporation doing business within its borders. Wis. Stat. § 71.01(12) (1969 & Supp. 1986). If the corporation is a multistate unitary business, Wisconsin taxes an apportioned share of the enterprise's entire net income determined pursuant to a three-factor (property, payroll, and sales) formula. § 71.07 (2).

Under the Wisconsin code, " '[n]et income' means, for corporations, 'gross income' less allowable deductions." § 71.02(1)(c). When the WPT was enacted, the state code provided that, in determining "net income," "[i]ncome, excess profits, war profits and capital stock taxes imposed by the federal government are not deductible from gross income." § 71.04(3) (Supp. 1986). The state legislature, however, apparently did not believe that the WPT, as a "temporary excise tax" on crude oil production, was subject to that provision. Wisconsin Legislative Fiscal Bureau, Analysis of Amendment to Wis. State. § 71-04 (Apr. 23, 1981). The state therefore amended section 71.04(3) to add that "the windfall profit tax under section 4986 of the internal revenue code is not deductible from gross income." 1981 Wis. Laws ch. 20, § 1090c (July 31, 1981).

In *Mobil Oil Corp. v. Ley*, No. 82 CV 4819 (Wis. Cir. Ct. April 3, 1986), the court rejected the taxpayer's constitutional and other challenges to the non-deductibility of WPT payments. The case is currently pending on appeal. *Mobil Oil Corp. v. Ley*, No. 86-1221 (Wis. Ct. App., Dist. IV).

APPENDIX H

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Article I, Section 8, Clause 3 of the United States Constitution:

> The Congress shall have power . . . .
>
> To regulate Commerce with Foreign Nations, and among the several States . . . .

Amendment XIV, Section 1 of the United States Constitution:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

NEW JERSEY CORPORATION BUSINESS TAX ACT

§ 54:10A-2. Franchise tax; annual payment in lieu of taxes upon intangible personal property; "doing business, employing or owning capital or property in state" defined

Every domestic or foreign corporation which is not hereinafter exempted shall pay an annual franchise tax for the year 1946 and each year thereafter, as hereinafter provided, for the privilege of having or exercising its corporate franchise in this State, or for the privilege of doing business, employing or owning capital or property, or maintaining an office, in this State. And such franchise tax shall be in lieu of all other State, county or local taxation upon or measured by intangible personal property used in business by corporations liable to taxation under this act but, whenever such corporation holds shares of stock in a bank as defined in R.S. 54:9-1, and such bank has not elected to have the taxable value of such shares assessed to it and to pay the tax levied against such shares as provided in R.S. 54:9-14, or, having made such election, such bank subsequently revokes it, the provisions of this section shall not exempt such shares of stock from the tax imposed by chapter 9 of Title 54 of the Revised Statutes.

A foreign corporation shall not be deemed to be doing business, employing or owning capital or property in the State, for the purposes of this act, by reason of (1) the maintenance of cash balances with banks or trust companies in this State, or (2) the ownership of shares of stock or securities in this State if such shares or securities are pledged as collateral security, or deposited with one or more banks or trust companies or brokers who are members of a recognized security exchange, in safekeeping or custody accounts, or (3) the taking of any action by any such bank or trust company or broker, which is incidental to the rendering of safekeeping or custodian service to such corporation.

§ 54:10A-4. Definitions

For the purposes of this act, unless the context requires a different meaning:

. . . .

(k) "Entire net income" shall mean total net income from all sources, whether within or without the United States, and shall include the gain derived from the employment of capital or labor, or from both combined, as well as profit gained through a sale or conversion of capital assets. For the purpose of this act, the amount of a taxpayer's entire net income shall be deemed prima facie to be equal in amount to the taxable income, before net operating loss deduction and special deductions, which the taxpayer is required to report to the United States Treasury Department for the purpose of computing its federal income tax; provided, however, that in the determination of such entire net income,

. . . .

(2) Entire net income shall be determined without the exclusion, deduction or credit of:

. . . .

(C) Taxes paid or accrued to the United States on or measured by profits or income, or the tax imposed by this act, or any tax paid or accrued with respect to subsidiary dividends excluded from entire net income as provided in paragraph (5) of subsection (k) of this section;

§ 54:10A-5. Amount of franchise tax

The franchise tax to be annually assessed to and paid by each taxpayer shall be the sum of the amount computed under subsection (a) hereof, or in the alternative to the amount computed under subsection (a) hereof, the amount computed under subsection (f) hereof, and the amount computed under subsection (c) hereof:

(a) That portion of its entire net worth as may be allocable to this State as provided in section 6, multiplied

by the following rates: 2 mills per dollar on the first $100,000,000.00 of allocated net worth; 4/10 of a mill per dollar on the second $100,000,000.00; 3/10 of a mill per dollar on the third $100,000,000.00; and 2/10 of a mill per dollar on all amounts of allocated net worth in excess of $300,000,000.00; provided, however, that with respect to reports covering accounting or privilege periods set forth below, the rate shall be that percentage of the rate set forth in this subsection for the appropriate year:

Accounting or Privilege Periods Beginning on or After:	The Percentage of the Rate to be Imposed Shall Be:
April 1, 1983	75%
July 1, 1984	50%
July 1, 1985	25%
July 1, 1986	0

(b) (Deleted by amendment, P.L.1968, c. 250, s. 2.)

(c) 3¼% of its entire net income or such portion thereof as may be allocable to this State as provided in section 6; provided, however, that with respect to reports covering accounting or privilege periods or parts thereof ending after December 31, 1967, the rate shall be 4¼%; and that with respect to reports covering accounting or privilege periods or parts thereof ending after December 31, 1971, the rate shall be 5½%; and that with respect to reports covering accounting or privilege periods or parts thereof ending after December 31, 1974, the rate shall be 7½%; and that with respect to reports covering accounting or privilege periods or parts thereof ending after December 31, 1979, the rate shall be 9%.

(d) Provided, however, that the franchise tax to be annually assessed to and paid by any investment company or real estate investment trust, which has elected to report as such and has filed its return in the form and within the time provided in this act and the rules and regulations promulgated in connection therewith, shall,

in the case of an investment company, be measured by 25% of its entire net income and 25% of its entire net worth, and in the case of a real estate investment trust, by 4% of its entire net income and 15% of its entire net worth, at the rates hereinbefore set forth for the computation of tax on net income and net worth, respectively, but in no case less than $250.00, and further provided, however, that the franchise tax to be annually assessed to and paid by a regulated investment company which for a period covered by its report satisfies the requirements of Chapter 1, Subchapter M, Part I, Section 852 (a) of the Federal Internal Revenue Code shall be $250.00.

(e) The tax assessed to any taxpayer pursuant to this section shall not be less than $25.00 in the case of a domestic corporation, $50.00 in the case of a foreign corporation, or $250.00 in the case of an investment company or regulated investment company.

(f) In lieu of the portion of the tax based on net worth and to be computed under subsection (a) of this section, any taxpayer, the value of whose total assets everywhere, less reasonable reserves for depreciation, as of the close of the period covered by its report, amounts to less than $150,000.00, may elect to pay the tax shown in a table which shall be promulgated by the director.

§ 54:10A-6. Taxpayer maintaining regular place of business outside state

In the case of a taxpayer which maintains a regular place of business outside this State other than a statutory office, the portion of its entire net worth to be used as a measure of the tax imposed by section 5(a) of this act, and the portion of its entire net income to be used as a measure of the tax imposed by section 5(c) of this act, shall be determined by multiplying such entire net worth and entire net income, respectively, by an allocation factor which shall be the average of the fractions

computed in (A), (B) and (C) below, or of so many of them as may be applicable, that is:

(A) The average value of the taxpayer's real and tangible personal property within the State during the period covered by its report divided by the average value of all the taxpayer's real and tangible personal property wherever situated during such period; provided, however, that for the purpose of determining average value, the provisions with respect to depreciation as set forth in paragraph 2(F) of subsection (k) of section 4 of P.L. 1945, c. 162 (C. 54:10A-4) shall be taken into account for arriving at such value.

(B) The receipts of the taxpayer, computed on the cash or accrual basis according to the method of accounting used in the computation of its net income for federal tax purposes, arising during such period from

(1) sales of its tangible personal property located within this State at the time of the receipt of or appropriation to the orders where shipments are made to points within this State,

(2) sales of tangible personal property located without the State at the time of the receipt of or appropriation to the orders where shipment is made to points within the State,

(3) (Deleted by amendment.)

(4) services performed within the State,

(5) rentals from property situated, and royalties from the use of patents or copyrights, within the State,

(6) all other business receipts (excluding dividends excluded from entire net income by subsection (k)(1) of section 4 hereof) earned within the State, divided by the total amount of the taxpayer's

receipts, similarly computed, arising during such period from all sales of its tangible personal property, services, rentals, royalties and all other business receipts, whether within or without the State.

For the purposes of this section, receipts shall not include any sum or sums of money received in payment for gas or electric energy sold to a public utility subject to taxation pursuant to P.L. 1940, c. 5 (C. 54:30A-49 et s for resale to ratepayers of the public utility.

(C) The total wages, salaries and other personal service compensation, similarly computed, during such period of officers and employees within the State divided by the total wages, salaries and other personal service compensation, similarly computed, during such period of all the taxpayer's officers and employees within and without the State.

In the case of a taxpayer which does not maintain a regular place of business outside this State other than a statutory office, the allocation factor shall be 100%.

In the case of a banking corporation which maintains a regular place of business outside this State other than a statutory office, and which elects to take the exclusion from net worth provided in subsection (d) of section 4 of P.L. 1945, c. 162 (C. 54:10A-4) or the deduction from entire net income provided in subsection (k)(4) of section 4 of P.L. 1945, c. 162, the allocation factor shall be computed and applied in accordance with section 6 of P.L. 1945, c. 162 (C. 54:10A-6); provided, however, that the numerators and the denominators of the fractions described in section 6(A), 6(B) or 6(C) shall include all amounts attributable, directly or indirectly, to the production of the eligible net income of an international banking facility as defined in subsection (k)(4) of section 4 of P.L. 1945, c. 162, whether or not such amounts are otherwise attributable to this State.

CRUDE OIL WINDFALL PROFIT TAX OF 1980,
I.R.C. §§ 4986 *et seq.*

SEC. 4986. IMPOSITION OF TAX.

(a) IMPOSITION OF TAX.—An excise tax is hereby imposed on the windfall profit from taxable crude oil removed from the premises during each taxable period.

(b) TAX PAID BY PRODUCER.—The tax imposed by this section shall be paid by the producer of the crude oil.

SEC. 4987. AMOUNT OF TAX.

(a) IN GENERAL.—The amount of tax imposed by Section 4986 with respect to any barrel of taxable crude oil shall be the applicable percentage of the windfall profit on such barrel.

* * * *

SEC. 4988. WINDFALL PROFIT; REMOVAL PRICE.

(a) GENERAL RULE.—For purposes of this chapter, the term "windfall profit" means the excess of the removal price of the barrel of crude oil over the sum of—

(1) the adjusted base price of such barrel, and

(2) the amount of the severance tax adjustment with respect to such barrel provided by section 4996(c).

(b) NET INCOME LIMITATION ON WINDFALL PROFIT.—

(1) IN GENERAL.—The windfall profit on any barrel of crude oil shall not exceed 90 percent of the net income attributable to such barrel.

(2) DETERMINATION OF NET INCOME.—For purposes of paragraph (1), the net income attributable to a barrel shall be determined by dividing—

(A) the taxable income from the property for the taxable year attributable to taxable crude oil, by

(B) the number of barrels of taxable crude oil from such property taken into account for such taxable year.

(3) TAXABLE INCOME FROM THE PROPERTY.—For purposes of this subsection—

(A) IN GENERAL.—Except as otherwise provided in this paragraph, the taxable income from the property shall be determined under section 613(a).

* * * *

(c) REMOVAL PRICE.—For purpose of this chapter—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the term "removal price" means the amount for which the barrel is sold.

(2) SALES BETWEEN RELATED PERSONS.—In the case of a sale between related persons (within the meaning of section 144(a)(3)), the removal price shall not be less than the constructive sales price for purposes of determining gross income from the property under section 613.

(3) OIL REMOVED FROM PREMISES BEFORE SALE.—If crude oil is removed from the premises before it is sold, the removal price shall be the constructive sales price for purposes of determining gross income from the property under section 613.

(4) REFINING BEGUN ON PREMISES.—If the manufacture or conversion of crude oil into refined products begins before such oil is removed from the premises—

(A) such oil shall be treated as removed on the day such manufacture or conversion begins, and

(B) the removal price shall be the constructive sales price for purposes of determining gross income from the property under section 613.

(5) MEANING OF TERMS.—The terms "premises" and "refined product" have the same meaning as when used for purposes of determining gross income from the property under section 613.

SEC. 4989. ADJUSTED BASE PRICE.

(a) ADJUSTED BASE PRICE DEFINED.—For purposes of this chapter, the term "adjusted base price" means the base price for the barrel of crude oil plus an amount equal to—

(1) such base price, multiplied by

(2) the inflation adjustment for the calendar quarter in which the crude oil is removed from the premises.

The amount determined under the preceding sentence shall be rounded to the nearest cent.

(b) INFLATION ADJUSTMENT.—

(1) IN GENERAL.—For purposes of subsection (a), the inflation adjustment for any calendar quarter is the percentage by which—

(A) the implicit price deflator for the gross national product for the second preceding calendar quarter, exceeds

(B) such deflator for the calendar quarter ending June 30, 1979.

* * * *

(c) BASE PRICE FOR TIER 1 OIL.—For purposes of this chapter, the base price for tier 1 oil is—

(1) the ceiling price which would have applied to such oil under the March 1979 energy regulations if it had been produced and sold in May 1979 as upper tier oil, reduced by

(2) 21 cents.

(d) BASE PRICES FOR TIER 2 OIL AND TIER 3 OIL.—For purposes of this chapter—

(1) GENERAL RULE.—Except as provided in paragraph (2), the base prices for tier 2 oil and tier 3 oil shall be prices determined pursuant to the method prescribed by the Secretary by regulations. Any method so prescribed shall be designed so as to yield, with respect to oil of any grade, quality, and field, a base price which approximates the price at which such oil would have sold in December 1979 if—

(A) all domestic crude oil were uncontrolled, and

(B) the average removal price for all domestic crude oil (other than Sadlerochit oil) were—

(i) $15.20 a barrel for purposes of determining base prices for tier 2 oil, and

(ii) $16.55 a barrel for purposes of determining base prices for tier 3 oil.

* * * *

SEC. 4991. TAXABLE CRUDE OIL; CATEGORIES OF OIL.

(a) TAXABLE CRUDE OIL.—For purposes of this chapter, the term "taxable crude oil" means all domestic crude oil other than exempt oil.

* * * *

(c) TIER 1 OIL.—For purposes of this chapter, the term "tier 1 oil" means any taxable crude oil other than—

(1) tier 2 oil, and

(2) tier 3 oil.

(d) TIER 2 OIL.—For purposes of this chapter—

(1) IN GENERAL.—Except as provided in paragraph (2), the term "tier 2 oil" means—

(A) any oil which is from a stripper well property within the meaning of the June 1979 energy regulations, and

(B) any oil from an economic interest in a Naval Petroleum Reserve held by the United States.

(2) EXCLUSION OF CERTAIN OIL.—The term "tier 2 oil" does not include tier 3 oil.

(e) TIER 3 OIL.—For purposes of this chapter—

(1) IN GENERAL.—The term "tier 3 oil" means—

(A) newly discovered oil,

(B) heavy oil, and

(C) incremental tertiary oil.

* * * *

SEC. 4996. OTHER DEFINITIONS AND SPECIAL RULES.

* * * *

(c) SEVERANCE TAX ADJUSTMENT.—For purposes of this chapter—

(1) IN GENERAL.—The severance tax adjustment with respect to any barrel of crude oil shall be the amount by which—

(A) any severance tax imposed with respect to such barrel, exceeds

(B) the severance tax which would have been imposed if the barrel had been valued at its adjusted base price.

(2) SEVERANCE TAX DEFINED.—For purposes of this subsection, the term "severance tax" means a tax—

(A) imposed by a State with respect to the extraction of oil, and

(B) determined on the basis of the gross value of the extracted oil.

(3) LIMITATIONS.—

(A) 15 PERCENT LIMITATION.—A severance tax shall not be taken into account to the extent that the rate thereof exceeds 15 percent.

(B) INCREASES AFTER MARCH 31, 1979, MUST APPLY EQUALLY.—The amount of the severance tax taken into account under paragraph (1) shall not exceed the amount which would have been imposed under a State severance tax in effect on March 31, 1979, unless such excess is attributable to an increase in the rate of the severance tax (or to the imposition of a severance tax) which applies equally to all portions of the gross value of each barrel of oil subject to such tax.

* * * *

(f) ADJUSTMENT OF REMOVAL PRICE.—In determining the removal price of oil from a property in the case of any transaction, the Secretary may adjust the removal price to reflect clearly the fair market value of oil removed.

* * * *

APPENDIX I

STATEMENTS PURSUANT TO RULE 28.1

AMERADA HESS CORPORATION

Alpetco (U.K.) Ltd.
Amerada Hess El Qa Corporation
Anglomar Shipping Company Ltd.
Ariadne Co. L.P.
Artemis Marine Co. L.P.
Atlas Marine Co.
Conmar Terminals, Ltd.
Esperanza Petroleum Corporation
First United Shipping Corp.
Granreunion Co.
Interocean Tanker Corp.
Matco Tankers (U.K.) Ltd.
Meadville Corporation
Minas y Petroleos Del Ecuador
Oasis Oil Company of Libya, Inc.
Petroleos Yasuni, C.A.
Pict Petroleum Plc
Second United Shipping Corp.
Solar Gas, Inc.
South Jersey Terminal Corp.
St. Croix Petrochemical Corp.
St. Lucia Road Contractors
Third United Shipping Corp.
(formerly Lion Tankers, Ltd.)
Williams Fisher Hess Co., Ltd.
Wyatt, Inc.

ATLANTIC RICHFIELD COMPANY

ABE Beverage, Inc.
Agro Internacional, S. de R.L. de C.V.
Almeg Extrusion Company, Inc.
Alyeska Pipeline Service Company
Ambler Mining Company
Anaconda Exploration New Zealand Limited
Anamax Mining Company
Anamet, S.A. de C.V.
ARCO Chemical IBERICA, S.A.
ARCO Oil Limited
ARCO Solar Nigeria, Ltd.
Arpet Petroleum Limited
A/S Skaland Graftiverk
Atlantic Richfield Oil Limited
Atlantic Richfield de Mexico, S.A. de C.V.
Badger Pipeline Company
Black Lake Pipe Line Company
Blair Athol Coal Pty., Limited
Candel International, Limited
Caribou-Chaleur Bay Mines Ltd.
Caribou-Smith Mines Ltd.
Centroamerica de Cobre, S.A.
Cobre de Hercules, S.A.
Cobre de Mexico, S.A.
Cobrecel, S.A. de C.V.
Colonial Pipeline Company
Compania Minera Dos Republicas S.A. de C.V.
Compania Minera Kappa, S.A.
Compania Minera Penacobre, S.A.
Compania de Petroleo Ganso Azul, Ltda.
Cook Inlet Pipe Line Company
Cupro San Luis, S.A. de C.V.
Delaware Bay Transportation Company
Dexter de Mexico, S.A.
Dixie Pipeline Company
East Texas Salt Water Disposal Co.

85819 Canada Limited
Eisenhower Mining Company
Empresa de Comercio Exterior Mexicano, S.A. de C.V.
Ericsson
Flower Street Limited
Gravity Adjustment, Inc.
Greater Pacific Limited
Imperial Eastman de Mexico, S.A.
Impulsora De Cobre, S.A. de C.V.
Industrias Nacobre, S.A. de C.V.
Industrias Tecnos, S.A. de C.V.
Iricon Agency Ltd.
Kenai Pipe Line Company
Kronos, Computacion y Teleproceso, S.A. de C.V.
Kuparuk Transportation Capital Corporation
Kuparuk Transportation Company
Las Quintas Serenas Water Company
Lavan Petroleum Co.
Lingobronce, S.A.
Manufacurera Mexicana De Partes Para Automoviles, S.A. de C.V.
Mayflower Mining Company
Minera Anaconda Limitada
Montoro, Empresa Para La Industria Quimica
Nacional de Cobre, S.A.
Nihon Oxirane Company, Ltd.
Nordisk Mineselskab A/S
Oxirane Technology (Japan) Company
P.T. Arutmin Indoensia
P.T. Elnusa Chemlink
Park City Ventures
Park-Cummings Mining Company
Park-Premier Mining Company
Participaciones Mexicanas, S.A. de C.V.
Platte Pipe Line Company
Prince Consolidated Mining Company
Productos Especiales Metalicos, S.A.
Richfield U.K. Petroleum, Limited

Rodman, Inc.
Servicios Industriales Nacobre, S.A.
Sinclair (U.K.) Oil Company Limited
Sinclair Venezuelan Oil Company
Smoke House Copper Mining Company
Sociedade Anonima Marvin
Solvanmex, S.A. de C.V.
SUMIARCO Company Limited
Swecomex, S.A.
Tecumseh Pipe Line Company
Texas-New Mexico Pipe Line Company
Tubos Flexibles, S.A.
Union de Credito Industrial Vallejo, S.A.
West Mayflower Mining Company
William Prym de Mexico, S.A.

CHEVRON U.S.A. INC./GULF OIL CORPORATION *

American Overseas Petroleum Limited
    American Overseas Petroleum (Spain) Limited
Arabian Chevron Overseas Limited
Arabian Chevron, Inc.
AMAX Inc.

Bahama California Oil Company
Belize Chevron Oil Company
California (Nigeria), Incorporated
    Chevron Oil Company (Nigeria)
California Asiatic Oil Company
    Chevron Darajat Limited
    Chevron Jambi Inc.
    Chevron Langsa Inc.
    Chevron Natuna Inc.
    Chevron Nauka Inc.
    Chevron Oil Company (Nigeria)
    Chevron Oil Company of Spain
    Chevron Singkarak Inc.
California Ecuador Petroleum Company
Caltex Petroleum Corporation
Chevron do Brasil Participacoes e Empreendimentos Ltda.
Chevron Amazon Petroleum Company
Chevron Australia Transport Pty., Ltd.
    Northwest Shelf Shipping Service Company Pty. Ltd.
Chevron Bahia Petroleum Company
Chevron Bahia Sul Petroleum Company
Chevron Canada Limited
    Chevron Canada Resources Limited
        Chevron Canada Petroleum Limited
        Glen Park Gas Pipeline Company Limited
        Rimbey Pipe Line Co. Ltd.
        Standard Development Company Limited
        Sultran Ltd.

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* Chevron U.S.A. Inc. and Gulf Oil Corporation were merged after the commencement of this litigation.

Chevron Minerals Limited
Cornwallis Arctic Oils Limited
Furnace Oil Sales Ltd.
Irving Oil Company, Limited
Irving Oil Limited
Canaport Limited
Irving California Oil Company Ltd.
Irving Oil Terminals Ltd.
Irving Oil Limited
Canaport Limited
Irving California Oil Company Ltd.
Irving Oil Terminals Ltd.
Standard Oil Company of British Columbia (1981) Limited
Chevron Coal Development Company
Chevron Corporation
Chevron Environmental Health Center, Inc.
Chevron Exploration Corporation
Chevron Exploration Corporation of Chile
Chevron Exploration Corporation of Sudan
Chevron Foreign Service Corporation
Chevron Guaratuba Petroleum Company
Chevron Iguape Petroleum Company
Chevron Indonesia Oil Company
Chevron Industries, Inc.
Chevron Mineral Corporation of Ireland
Chevron International Oil Company, Inc.
A/S Hydrantanlaegget Koebenhavns Lufthavn, Kastrup
Aircraft Fuel Supply B.V.
Chevron Belgium Refining
Chevron Erdoel Handels G.m.b.H.
Caltex Deutschland G.m.b.H.
Chevron Functional Fluids, Inc.
Chevron International Services, Inc.
Chevron International Trading Company—West Africa

Chevron Italiana Marina Aviazione S.p.A.
MARS—Milan Airport Refuelling Services S.p.A.
SERAM—S.p.A.
Chevron Oil (Switzerland)
Mittelland Refinery Limited
SARACO S.A.
TAR—Tankanlage Ruemlang A.G.
UBAG—Unterflurbetankungsanlage Flughafen Zurich
Chevron Oil Latin America, Inc.
Chevron Oil Trading Company
Maasvlakte Olie Terminal N.V.
Rotterdam-Antwerpen Pijpleiding (Belgie) N.V.
Rotterdam-Antwerpen Pijpleiding (Nederland) N.V.
Sunset Oil Trading Limited
Chevron Itajai Petroleum Company
Chevron Land and Development Company
C-W Properties, Inc.
Glenwood Properties
Ontario Center, The
Pacific Coast Homes
Sepulveda Properties, Inc.
Chevron Maranhao Petroleum Company
Chevron Maritime Transport Corporation
Chevron Mineral Corporation of Ireland
Chevron Natural Gas Services, Inc.
Chevron Nile Services Limited
Chevron Oceanic, Inc.
Arabian American Oil Company
Aramco Overseas Company
Aramco Services Company
Trans-Arabian Pipe Line Company
Arabian Chevron Trading Company
Associated Octel Company Limited, The
A.K. Chemie G.m.b.H.
Associated Octel Company (Plant) Limited

Associated Octel Company (South Africa)
(Proprietary) L
Octel Societe Anonyme
Societa Italiana Additivi per Carburanti SpA
(S.I.A.C.)
Societe Octel-Kuhlmann
Caltex Mediterranean Limited
Chevron Capital N.V.
Chevron Oceanic (Middle East), Inc.
Chevron Oil and Chemical Company AB
Chevron Oil Company of The Netherlands
Gulf Oil (Nederland) Exploration and
Production Company
Chevron Oil Service Company
Chevron International Oil Company Limited
Hydrant Servicing Company Limited
Quotegem Limited
United Kingdom Oil Pipelines Limited
Chevron Oil (Ireland) Limited
Chevron Petroleum (U.K.) Limited
British Kewanee, Inc.
Kewanee Oil Company (U.K.) Limited
Chevron Exploration North Sea Limited
Chevron Petroleum Company Limited
Chevron Oil, Sociedad Anonima
Eastern Transport Corporation
N.V. Rotterdam-Rijn Pijpleiding Maatschappij
Chevron Oil & Chemical Company Pty. Ltd.
Chevron Oil and Chemical Company Limited
Chevron Oil and Chemical Company Oy
Chevron Oil Company (Ghana)
Chevron Oil Company of Central African Republic
Chevron Oil Company of Chad
Societe d'Etude et d'Exploitation de la Raffinerie
du Tch
Chevron Oil Company of Egypt
Chevron Oil Company of Equatorial Guinea
Chevron Oil Company of Ethiopia

Chevron Oil Company of Gabon
Chevron Oil Company of Germany
Chevron Oil Company of India
Chevron Oil Company of Ireland
Chevron Oil Company of Italy S.p.A.
Chevron Oil Company of Japan
Chevron Oil Company of Kenya
Chevron Oil Company of Korea
Chevron Oil Company of Liberia
Chevron Oil Company of Madagascar
Chevron Oil Company of Mauritius
Chevron Oil Company of Morocco
Chevron Oil Company of Niger
Chevron Oil Company of Portugal
Chevron Oil Company of Senegal
Chevron Oil Company of South Africa
Chevron Oil Company of South West Africa
Chevron Oil Company of Sudan
Chevron Oil Company of Syria
Chevron Oil Company of Thailand
Chevron Oil Company of The Gambia
Chevron Oil Company of The Philippines
Chevron Oil Company of Uruguay
Chevron Oil Company of Yugoslavia
Chevron Oil Company of Yugoslavia (Jabuka)
Chevron Oil Company of Yugoslavia (Mljet)
Chevron Oil Exploration Company of Greece
Chevron Oil Field Research Company
Chevron Orient, Inc.
Chevron Overseas Finance Company
Chevron Oil Company of Venezuela
Tierras e Inversiones Venezuela, C.A.
Compania Petrolera Chevron, Ltd.
Chevron Overseas Petroleum Inc.
Chevron Petroleum Company of Brazil
Chevron Petroleum Company of Colombia
Chevron Petroleum Company of Greenland
Chevron Petroleum Company of Norway

Chevron Petroleum Norge A/S
Chevron Pipe Line Company
    Chevron Alaska Pipe Line Company
    Chevron Raven Ridge Pipe Line Company
Chevron Porto Belo Petroleum Company
Chevron Research Company
    B.V. Chevron Centrale Laboratoria
    Chevron do Brasil Ltda.
    Chevron Research Company (Japan) Ltd.
Chevron Sao Luis Petroleum Company
Chevron Sao Marcos Petroleum Company
Chevron Shale Oil Company
Chevron Shipping Company
Chevron Solemar Petroleum Company
Chevron Standard Limited
    Chevron Canada Resources Limited
        Chevron Canada Petroleum Limited
        Glen Park Gas Pipeline Company Limited
        Rimbey Pipe Line Co. Ltd.
        Standard Development Company Limited
        Sultran Ltd.
Chevron Stations, Inc.
Chevron Tankers (Nederland) B.V.
Chevron Telecommunications Company
Chevron U.S.A. Inc.
    American Gilsonite Company
    American Personnel Services Inc.
    Argentine Gulf Oil Company
    Atlas Supply Company
    Australian Gulf Oil Company
    Bolivian Gulf Oil Company
    Cabinda Gulf Oil Company
        Cabina Gulf Oil Company Limited
    California Company, The
    Canyon Reef Carriers, Inc.
    Chandeleur Pipe Line Company
    Chevron Capital U.S.A. Inc.

Chevron Chemical Company
    Aditivos Mexicanos, S.A. de C.V.
    Chevron do Brasil Ltda.
    Chevron Chemical (Canada) Limited
        Cansulex Limited
        Later Chemicals Limited
    Chevron Chemical (Far East) Private Limited
    Chevron Chemical Company S.A.F.
        Deutsche Ortho G.m.b.H.
    Chevron Chemical International Sales, Inc.
    Chevron Chemical International, Inc.
    Chevron Chemical, S.A.
        Chevron Chemical G.m.b.H
    Chevron International Chemicals Inc.
    Chevron International Chemicals Ltd.
    Coromandel Fertilisers Limited
    Crediton Enterprises, Inc.
    Gulf Chemicals International, Inc.
        Plastigama S.A.
    Gulf Doric Western Corporation
    Harshaw Chemical Company, The
    Insecticidas Ortho, S.A.
    Internacional de Basicos y Quimicos, S.A. de C.V.
    Karonite Chemical Company, Limited
    Nippon Petroleum Detergent Company, Limited
    Orogil, S.A.
    Penrith Enterprises, Inc.
    Petrosynthese S.A.
    Quimicas Ortho De California, Limitada
    Ripon Enterprises, Inc.
    Spirolite Corporation
Chevron Geothermal Company of California
Chevron Investment Management Company
Chevron Italia Oil Company S.p.A.
Chevron Oil Finance Company
Chevron Petroleum Company of The Netherlands
Chevron Sulawesi Inc.

Chevron Travel Club, Inc.
Chevron Travel Club Services Company
CLP Corporation
Dixie Pipeline Company
Douala Gulf Oil Company
Ecuadorian Gulf Oil Company
Explorer Pipeline Company
Federal Engineering Corporation
Compania Comercial Chevron, S.A.
Felix Oil Company
Gulf Agricultural Chemicals Company Limited
Gulf (U.K.) Offshore Investments Limited
Gulf Oil (Great Britain) Limited
Gulf Oil North Sea Limited
Gulf Oil Refining Limited
London Oil Refining Co. Limited, The
London Oil Refining Co. Limited, The
Lorco Oils (North) Limited
Lorco Oils (North) Limited
Gulf Oil (U.K.) Limited
Gulf Oil Zaire S.A.R.L.
Gulf Asian Investments Company Limited
Gulf Auto Club, Inc.
Gulf Offshore Cameroon Company
Gulf Oil Communications Company, Inc.
Gulf Oil Company of Cameroon
Gulf Oil Company of Gabon
Gulf Oil Company-Eastern Hemisphere
Gulf Oil Germany Inc.
Gulf Oil Realty Company
Gulf Reston Properties, Inc.
Gulf Research & Development Company
Gulf Oil Company (Nigeria) Limited
Gulf Oil Zaire S.A.R.L.
Plaschem International Co. (Hong Kong) Limited
Gulf West Cameroon Exploration Company
Intermountain Geothermal Company

International Bitumen Emulsions Corporation
Kenai Pipe Line Company
Kewanee Industries, Inc.
Kewanee Overseas Oil Company
Netherlands Kewanee, Inc.
Long Beach Oil Development Company
Mid-Valley Pipeline Company
Murvale Company
Norske Gulf Production Company A/S
Paloma Pipe Line Company
Pembroke Capital Company Inc.
Petroleum Facilities, Inc.
Pittsburg & Midway Coal Mining Co., The
Solvent Refined Coal International, Inc.
Plantation Pipe Line Company
Platte Pipe Line Company
Powell Bend Mining Co.
South Pacific Gulf Oil Company
Standard Gas Company
Standard Gasoline Company
Standard Oil Company
Standard Oil Company of Texas, Inc.
Standard Pacific Gas Line Incorporated
Standard Pipe Line Company
Suriname Gulf Oil Company
Transocean Group, Inc.
Transinsco, Inc.
Transocean Gulf Oil Company
Bermaco Insurance Company Limited
Insco Limited
Britamco Limited
Cayman Kewanee Limited
Caribbean Gulf Refining Corporation
Chevron Caribbean Investments Inc.
Chevron International Limited
Balinesian Gulf Oil Limited
Chevron Barreirinhas Exploration Limited
Chevron Servicos de Petroleo Ltda.

Chevron International (Argentina) Limited
Chevron International (Malaysia) Limited
Chevron International Italy Limited
Chevron International Somalia Limited
Chevron International Yugoslavia Limited
Chevron LNG Shipping Company Limited
International Gas Transportation Company Limited
Chevron Transport Corporation
Chevron Product Carriers Corporation
Gulf Fujairah Petroleum Limited
Gulf Musandam Petroleum, Limited
Gulf Oil (Ireland) Limited
Gulf Oil of Colombia Limited
Gulf Oil Australia Pty. Ltd.
Gulf Oil Egypt Limited
Gulf Oil Pakistan Limited
Gulf Oil Ras Al-Khaimah Limited
Gulf Oil Shadwan Limited
Gulf Oil Suez Limited
Gulf Oil Terminals (Ierland) Limited
Britama Tankers Limited
Gulf Oman Petroleum Limited
Kupan International Company Pension Plan Trustees L
Natuna Gulf Oil Limited
New Frontiers Limited
Niugini Gulf Oil Pty. Limited
Sumatra Gulf Oil, Limited
Tunisian Gulf Exploration and Production Company
Chevron Marine and Services Company Limited
Chevron Transport Corporation
Chevron Product Carriers Corporation
Eastern Gulf Oil Company Limited
Britama Tankers Limited
Global Energy Operations and Management Company, Ltd.

Gulf (U.K.) Offshore Investments Limited
Gulf U.K. Offshore Exploration Company Limited
Gulf Asian Investments Company Limited
Gulf Kuwait Company
Burgan Pension Fund Trustees Limited
Kuwait Oil Company Limited
Burgan Pension Fund Trustees Limited
Kuwait Oil Company Trustees Limited
Kuwait Oil Company Trustees Limited
Gulf Oil (Ireland) Limited
Gulf Oil (U.K.) Limited
Britama Tankers Limited
Chevron Chemical U.K. Limited
Gaelic Oil Company Limited, The
Gulf International Trading Company (Europe) Limited
Gulf Oil (Great Britain) Limited
Gulf Oil North Sea Limited
London Oil Refining Co. Limited, The
Gulf Oil Refining Limited
Lorco Oils (North) Limited
London Oil Refining Co. Limited, The
Lorco Oils (North) Limited
Gulf Oil Financial Services Company Limited
Chevron Chemical U.K. Limited
Gulf Oil Terminals (Ireland) Limited
Kewanee Oil Company (U.K.) Limited
Silvertown Lubricants Limited
Gaelic Oil Company Limited, The
Gulf International Trading Company (Europe) Limited
Chevron Chemical U.K. Limited
Gulf Oil Financial Services Company Limited
Gulf Oil Refining Limited

Gulf Oil Company (Nigeria) Limited
Gulf Oil Finance N.V.
Gulf Oil Services, Inc.
Gulf Oil Zaire S.A.R.L.
Gulf U.K. Offshore Exploration Company Limited
Iranian Oil Participants Limited
Iranian Oil Services (Holdings) Limited
Mene Grande Oil Company
Norwegian Gulf Exploration Company A/S
Plaschem International Co. (Hong Kong) Limited
Venezuela Gulf Refining Company
Warren Petroleum, Inc.
West Texas Gulf Pipe Line Company
Western States Geothermal Company
Zaire Gulf Oil Company
Gulf Oil Zaire S.A.R.L.
Chevron Ubatuba Petroleum Company
Chevron Venezuela Services Inc.
Compania de Petroleo Chevron S.A.
Compania Comercial California S.A.
Compania Comercial Conchan S.A.
Cobpania Minera Chevron de Espana, S.A.
Compania Minera Chevron, Inc.
Compania Petrolera Chevron
Compania Petrolera Chevron Guatemala
Compania Petrolera Chevron Honduras
Compania Petrolera Chevron Nicaragua
Compania Petrolera Chevron, Inc.
Cornwallis Arctic Oils Limited
Crest Exploration Limited

Dominion Oil Limited

Far Eastern Petroleum Company Limited
Chevron Overseas Petroleum Limited
BORCO Towing Company Limited
Freeport Trading Company Limited

Marine Agents and Brokers Limited
Overseas Petroleum Company Limited
BORCO Towing Company Limited
Freeport Trading Company Limited
Marine Agents and Brokers Limited
River Nile Petroleum Company Limited
White Nile Petroleum Company Limited

Gasolinas Chevron de Puerto Rico Inc.
Gulf Oil Corporation

Huntington Beach Company
Huntington Pacific Corporation
Huntington Seacliff Corporation
Mansion Properties, Inc.

Iran Chevron Oil Company
Iranian Oil Participants Limited
Iranian Oil Services (Holdings) Limited

Kelmac, Inc.
Ukamar Limited

Oil Insurance Limited
Oil Investment Corporation Ltd.
Oil Investment Corporation Ltd.

P. T. Caltex Pacific Indonesia
Pacific Oil Company
Petroleum Buildings, Inc.

Refineria Petrolera de Guatemala-California, Inc.

Standard Oil Company
Standard Oil Company of California
Standard Oil Company of Delaware
Standard Oil Company, Inc.
Standard Oil Company, Ltd.
Standard Oil Sales Co., Inc.

UNC Incorporated

Western Company, The
Western Transnav Company

CITIES SERVICE COMPANY

(Now CanadianOxy Offshore Production Co.)

Diamond Shamrock Italia, S.p.A.—Italy
Beatrice Pocahontas Company—Delaware
Canadian Occidential Petroleum Ltd.—Canada (Dominion)
Carbocloro S.A. Industrias Quimicas—Brazil
Church & Dwight Co., Inc.—Delaware
Citco Union Texas Petroleo de Brasil Ltda.—Brazil
Diamond Shamrock Chemicals Company Pty. Limited—Australia
Diamond Shamrock de Chile S.A.I.—Chile
Distribuidora y Exportadora Udylite, S.A.—Mexico
Dixie Pipeline Company—Delaware
East Texas Salt Water Disposal Company—Texas
Eko Hotels Limited—Nigeria
Enoxy Coal, Inc.—Delaware
Enoxy Holding, Inc.—Delaware
Excel de Mexico, S.A. de C.V.—Mexico
Hazox Corporation
Hispano Inversion, S.A.—Spain
Hybrid Rice, Inc.—Delaware
Industria Quimica de Portuguesa, S.A.—Venezuela
Industrias Oxy S.A. de C.V.—Mexico
International Ore & Fertilizer Belgium, S.A.—Belgium
Intragas Management B.V.—Netherlands
Island Creek of China Coal Ltd.—Bermuda
Korea Potassium Chemical Co., Ltd.—Korea
Malharia Industrial do Nordeste S.A. ("Malharia")—Brazil
Minera Azteca, S.A. de C.V.—Mexico
Mississippi Chemical Corporation—Mississippi
Numinter Limited—United Kingdom
Occidental Chemical China Limited—Hong King
Occidental Chemical Far East Limited—Hong Kong
Occidental de Espana, S.A.—Spain

Occiental Petroleum Corporation
Oil Casualty Insurance, Ltd.—Bermuda
Oxy Metal Industries (France) S.A.—France
OXYTECH Systems, Inc.—Delaware
Palo Duro Pipeline Company, Inc.—Delaware
Petway Products Distributors, Inc.—New York
Plasticos y Derivados Compania Anonima—Venezuela
Plastiflex, C.A.—Venezuela
Rail to Water Transfer Corporation—Delaware
RAMM Hybrids, Inc.—Delaware
RAMM Hybrids International, Inc.—Japan
Sumitomo Durez Co., Ltd.—Japan
Thai Diamond Shamrock Chrome Limited—Thailand
Thai Diamond Shamrock, Ltd.—Thailand
Tororo Industrial Chemicals and Fertilizers Limited—Uganda
Trans-Jeff Chemical Corporation—Delaware
602 Operating Corporation—Delaware
Rose Creek Vangorda Mines Ltd.
Petrogas Processing Ltd.
Blake Resources Ltd.
Sultran Ltd.
Cansulex Limited
Cynthia Gas Gathering Company Limited
Syncrude Canada Ltd.
Northward Developments Ltd.
Nova, an Alberta Corporation
Nottingham Gas Limited

CONOCO INC.

E. I. du Pont de Nemours and Company
Conoco Delaware, Inc.
Big Sky of Montana Realty, Inc.
Cit-Con Oil Corporation
Conch International Methane Ltd.
Felix Oil Company
Jupiter Chemicals, Inc.
Kettleman North Dome Assoc.
Long Beach Oil Development Company
Oberrheinische Mineraloelwerke GmbH (OMW)
Petco Enterprises Ltd.
Petrocokes Ltd.
Petrocokes Terminals, Inc.
Southern Facilities, Inc.
The Standard Shale Products Company
Tidelands Royalty Trust

EXXON CORPORATION

Abu Dhabi Company for Onshore Oil Operations
Abu Dhabi Petroleum Company Limited
Ace Polymer Co., Ltd.
Aditivos Orinoco, C. A.
Adria-Wien Pipeline Gesellschaft mit beschrankter Haftung
Aircraft Fuel Supply B. V.
Aishin Sekiyu K. K.
Alberta Products Pipe Line Ltd.
Al-Jubail Petrochemical Company
Altona Petrochemical Company Limited
Alyeska Pipeline Service Company
Andian National Corporation, Limited
Arabian American Oil Company
Aramco Overseas Company
Aramco Services Company
A/S Futurum
Asakawa Sekiyu K.K.
Asociacion Civil "Academy La Castellana"
Atlas Supply Company
Atlas Supply Company of Canada Limited
Australian Synthetic Rubber Company Limited
Aviation Services Saudi Arabia Limited
Awaji Gas Nenryo Kabushiki Kaisha
Azuma Sekiyu K.K.
BEB Erdgas and Erdol GmbH, Hannover
B.W.O.C., Inc.
Bangkok Aviation Fuel Services Limited
Banshu Ekika Gas K. K.
Bayerische Erdgasleitung G.m.b.H.
Beaverhill Resources Limited
Bel-Air Entreposage S. A.
BRIGITTA Erdgas und Erdol GmbH, Hannover
Bryan Woodbine Gathering Inc.
Building Products of Canada Limited
Byron Creek Collieries (1983) Limited

Carlew Inc.
Carnduff Gas Limited
Cary Chemicals Inc.
Castle Peak Power Company Limited
Champlain Oil Products Limited
Changi Airport Fuel Hydrant Installation Pte. Ltd.
Chuo Sekiyu Hanbai K.K.
Commercial Polymers Pty. Ltd.
Compagnie d'Etancheite Africaine en Cote d'Ivoire S. A.
Compania Minera Disputada de Las Condes S.A.
Comptoir Auxiliaire du Petrole
Comptoir Oxonnaxien des Combustibles (C.O.C.)
Computer Centrum Groningen B.V.
DFTG Deutsche Flussigerdgas Terminal GmbH
D.O.C. Dutch Offshore Consortium B.V.
Daihatsu Sekiyu K.K.
Daiichi Kouyu K. K.
Daitsu Sangyo K.K.
Demulsificantes Del Orinoco, C.A.
Depot Petrolier du Gresivaudan
Depots de Petrole Cotiers
Depots Petrolier de la Corse
Deudan-Holding GmbH
Deutsche Erdgas Transport G.m.b.H.
Deutsche Transalpine Oelleitung G.m.b.H.
Devon Estates Limited
Dixie Pipeline Company
Dukhan Service Company
E S F Limited
Eagle Kenso K.K.
East Japan Oil Development Company, Limited
East Texas Salt Water Disposal Company
Eastcoast Spill Response Inc.
Eiko Sekiyu K.K.
Elwerath Erdgas und Erdol GmbH, Hannover
Elwerath Erdol und Erdgas AG
Emirates Chemicals Company
Emori Sekiyu K.K.

Emsland-Erdolleitung G.m.b.H.
Energie Marketing Service GmbH (EMS)
Entrepot Petrolier de l'Aveyron (E.P.A.)
Entrepot Petrolier de Mulhouse (E.P.M.)
Erdgas-Verkaufs-Gesellschaft m.b.H.
Escuela Las Morochas, C. A.
Esso Chemical Alberta Limited
Esso Energie G.I.E.
Esso Exploration and Production Angola Inc.
Esso Malaysia Berhad
Esso of Canada Limited
Esso Resources Canada Limited
Esso Societe Anonyme Francaise
Esso Standard Tunisie S. A.
Etablissements Cloarec
Exact Reisebyra A/S
Exxon Chemical Pakistan Limited
F. T. Giken Kabushiki Kaisha
Ferngas Nordbayern G.m.b.H.
Ferngas Salzgitter GmbH
Forjas de Colombia, S. A.
489061 Ontario Inc.
Fuji Kogyo K.K.
Gasunie Engineering B.V.
General Bussan K.K.
General Highway K.K.
General Petrochemical Industries Limited
General Sekiyu K.K.
General Sekiyu Okinawa Hanbai K.K.
General Sekiyu Overseas Ltd.
General Shipping Co. Ltd.
General Unyu Kabushiki Kaisha
Geobutane—Lavera
Gewerkschaft Brassert Erdol und Erdgas GmbH
Gewerkschaft Elwerath & Co. GmbH
Gewerkschaft Erdol-Raffinerie Deurag-Nerag
Gewerkschaft Gute Hoffnung Erdgas und Erdol GmbH
Gewerkschaft Kuchenberg Erdgas under Erdol GmbH

Goroku Seikyu K.K.
Grande Ecaille Land Company, Inc.
Groupement Immobilier Petrolier
Groupement Petrolier Aviation
Groupement Petrolier de Nantes
Groupement Petrolier du Finistere G.I.E.
Groupement pour l'Etude d'un Pipeline Bordeaux Toulouse
Hankyu Ferry K.K.
Hannoversche Erdolleitung G.m.b.H.
Hanshin Kyowa Seikyu K.K.
Hayakawa Sekiyu K.K.
Heinrich Schneider Spedition GmbH
Hiroshima General Gas Juten Kabushiki Kaisha
Hoei Sekiyu K.K.
Hokushin Bussan K.K.
Hokuyu Sekiyu K. K.
Home Oil Company Limited
Houston Regional Monitoring Corporation
Hydranten-Betriebsgesellschaft
Hydrierwerke Poelitz Aktiengesellschaft
Imperial Oil Limited
Imperial Pipe Line Company, Limited, The
Inada Ekka Gas Kabushiki Kaisha
Industry Promotion Enterprises Limited
Interprovincial Pipe Line (Alberta) Ltd.
Interprovincial Pipe Line Limited
Interprovincial Pipe Line (NW) Ltd.
Iranian Oil Participants Limited
Iranian Oil Services (Holdings) Limited
Iranian Oil Services Limited
Iraq Petroleum Company, Limited
Iraq Petroleum Pensions, Limited
Japan Butyl Company Limited
Japan Coal Liquefaction Development Company, Ltd.
Jersey Nuclear-Avco Isotopes, Inc.
K.K. Aizu General
K.K. Daimaru
K.K. General Sekiyu Hanbaisho

K.K. Genetech
K.K. Heian Sekiyu
K.K. Kanagawa Sekiyu Shokai
K.K. Kyoei Shosha
K.K. Kyowa Sekiyu Service
K.K. Marugo Izumasa Shoten
K.K. Nippatsu
K.K. Standard Sekiyu Osaka Hatsubaisho
K.K. Toko
K.K. Toresen
K.K. Uwano Sekiyu Shokai
K/S Statfjord Transport A/S & Co.
Kabushiki Kaisha Sankyo Plastics
Kai Tak Refuellers Company Limited
Kanto Kygnus Sekiyu Hambai K.K.
Karlsruhe-Stuttgart Rohrleitung Gesellschaft mbH
Kawasaki Kygnus Sekiyu Hambai Kabushiki Kaisha
Keiyo Sekiyu Hanbai K.K.
Kenya Petroleum Refineries Limited
Kibo Sekiyu Hanbai K.K.
Kimura Sekiyu Kabushiki Kaisha
Kinwa Sekiyu K.K.
Kobe Port Service Kabushiki Kaisha
Kobe Standard Sekiyu K.K.
Kowa Sekiyu K.K.
Kowloon Electricity Supply Company Limited
Kygnus Ekka Gas Kabushiki Kaisha
Kygnus Kosan Kabushiki Kaisha
Kygnus Marketing Service K.K.
Kygnus Sekiyu K.K.
Kyushu Eagle K.K.
LPL Investments, Inc.
Lakehead Pipe Line Company, Inc.
LEAG Aktiengesellschaft fur luzernisches Erdol
Leco Inc.
Les Docks des Petroles d'Ambes
Limburgsche Maatschappij voor Gasdistributie Limagas N.V.

Long Beach Oil Development Company
Maasvlakte Olie Terminal N.V.
Maasvlakte Coal Terminal B.V.
Maatschappij voor Intercommunale Gasdistributie Intergas N.V.
Maatschappij voor Intercommunale Gasvoorziening in Oost-Brabant "OBRAGAS N.V."
Magota Sekiyu K.K.
Mainline Pipelines Limited
Maple Leaf Petroleum Limited
Maquinas de Coser y Bordar Sigma, S.A.
Marugo Gas K.K.
MEGAL FINCO
MEGAL GmbH
Meiji Sekiyu K.K.
MESBIC Financial Corporation of Houston
Metro Fuel Co. Ltd.
Mikawa Bussan K.K.
Mittelrheinische Erdgas Transport Gesellschaft mit beschrankter Haftung
Montreal Pipe Line Limited/Les Pipe-Lines Montreal Limitee
Mytex Polymers Incorporated
NAM—K 7 B.V.
NAM—K 14 B.V.
NAM—K 15 B.V.
NAM/CLOMS—K 8/K 11 B.V.
NAM/CLOMS—L 13 B.V.
N. V. Nederlandse Gasunie
NPC Services, Inc.
Nakabayashi Sekiyu K.K.
Nansei Oil Terminal K.K.
Nansei Sekiyu Kabushiki Kaisha
Native Venture Capital Co. Ltd.
Near East Development Corporation
Nederlandse Aardolie Maatschappij B. V.
Neptune Bulk Terminals (Canada) Ltd.
Nichimo Kabushiki Kaisha

Nichimo Oil (Bermuda) Co., Ltd.
Nichimo Sekiyu Seisei Kabushiki Kaisha
Nikko Sangyo K.K.
Nippon Unicar K.K.
Nisku Products Pipe Line Company Limited
Nissei Sekiyu Kabushiki Kaisha
Norddeutsche Erdgas-Aufbereitungs G.m.b.H.
Norddeutsche Mineraloelwerke Stettin G.m.b.H.
Norddeutsche Oelleitungs-gesellschaft m.b.H.
Nordrheinische Erdgas Transport Gesellschaft mit beschrankter Haftung
Nord-West Oelleitung G.m.b.H.
Northward Developments Ltd.
Northwest Company, Limited
Nottingham Gas Limited
107580 Canada Inc.
139675 Canada Limited
151742 Canada Inc.
Office Prive d'Assurances et de Courtages
Offshore Medical Support Limited
Oil Field Chemicals Company (Saudi Arabia) Ltd.
Oil Service Company of Iran (Private Company)
Oil Spill Response Limited
Oil Transport Company (Saudi Arabia) Limited
Oldenburgische Erdol Gesellschaft m.b.H.
Osaka Ashyu Nenryou K.K.
Osaka Propane Gas Hambai Kabushiki Kaisha
Osaka Sekiyu Gas Yuso K. K.
P. T. Stanvac Indonesia
Pars Investment Corporation
Peninsula Electric Power Company Limited
Petroleum Refineries (Australia) Proprietary Limited
Petroleum Services (Middle East) Limited
Petrosvibri S.A.
Pinpoint Retail Systems Inc.
Pipe Line Services, Inc.
Plantation Pipe Line Company
Polder-Seehafen-Harburg GmbH

Portland Pipe Line Corporation
Primaer Oel GmbH
Progas A/S
Raffinerie du Midi S.A.R.L.
Rainbow Pipe Line Company, Ltd.
Redwater Water Disposal Company Limited
Refineria Petrolera Acajutla, S. A.
Renown Building Materials Limited
Rheingas Erdgasleitungs-Gesellschaft m.b.H.
Rochevert Inc.
Rotterdam Antwerpen Pijpleiding (Belgie)
Rotterdam-Antwerpen Pijpleiding (Nederland) N. V.
Ruhrgas Aktiengesellschaft
S.A. du Pipeline a Produits Petroliers sur Territoire Genevois (SAPPRO)
SEAG Aktiengesellschaft fur schweizerisches Erdol
S.O.P.—Societa Oleodotti Padani S. p. A.
Saitama Sekiyu Hanbai K.K.
Sakurajima Futo K.K.
Sanko Oil Kabushiki Kaisha
Sanyo Sekiyu K.K.
Saraco S. A.
Saudi Arabian Lube Additives Company Limited
Schubert KG
Scurry-Rainbow Oil Limited
Seibu Kygnus Sekiyu Hambai Kabushiki Kaisha
Seismic Industries A/S
Senpoku Oil Service K.K.
SERAM Societa per Azioni
Servacar Ltd.
Shehtah Drilling Limited
Shimoka Sekiyu Kabushiki Kaisha
Shimoyama Sekiyu K.K.
Shin-Nihon Yukagaku Kogyo K. K.
Shinohara Oil K.K.
Shizuoka Kanesho Hambai Kabushiki Kaisha
Smiley Gas Conservation Limited
Sociedad Anonima "Escuela Campo Alegre"

Sociedad de Inversiones de Aviacion
Sociedad Nacional de Oleoductos Ltda.
Societa Italiana per l'Oleodotto Transalpino S.p.A.
Societa per Azioni Raffineria Padana Olii Minerali-SARPOM
Societe Anonyme de la Raffinerie des Antilles
Societe Anonyme des Hydrocarbures
Societe Anonyme "Produits Lubrifiants de Madagascar" —PROLUMA S.A.
Societe Belge de Transport par Pipeline
Societe Civile de Mustapha Algerie
Societe Civile de Participation pour la Destruction des Dechets Industriels (SOCDI)
Societe Civile Immobiliere "Courcelles-Etoile"
Societe Civile Immobiliere de la Croix au Chene
Societe Civile Immobiliere due 195 Avenue de Neuilly
Societe Civile Immobiliere Khariessa
Societe Civile Immobiliere "Kleber-Etoile"
Societe Civile Immobiliere "Les Casseaux-Bougainville"
Societe de la Raffinerie d'Alger
Societe de la Raffinerie de Lorraine
Societe de Manutention de Carburants Aviation
Societe de Manutention de Carburants Aviation Dakar-Yoff, S.A.
Societe de Promotion et de Financement Touristique (CARTHAGO)
Societe d'Entreposage de San-Pedro
Societe des Pipe-Lines de Strasbourg
Societe des Transports Petroliers par Pipe Line
Societe d'Exploitation & de Developpement d'Operations Commerciales
Societe du Caoutchouc Butyl (SOCABU)
Societe du Pipe Line de la Raffinerie de Lorraine
Societe du Pipe-Line Mediterranee-Rhone
Societe du Pipeline Sud-Europeen
Societe Esso de Recherches et d'Exploitation Petrolieres Esso Rep
Societe Francaise Exxon Chemical
Societe "Gecmines-Caen"

Societe Havraise de Manutention de Produits Petroliers
Societe Hoteliere de la Petite Campagne
Societe Immobiliere Paris-Niel
Societe Ivoirienne d'Operations Petrolieres S.A.
Societe Malgache de Raffinage
Societe Reunionnaise d'Entreposage
Socony-Standard-Vacuum Oil Company (Petroleum Maatschappij)
Southern Natural Gas Development Pty. Ltd.
Standard Kosan Kabushiki Kaisha
Standard Service K.K.
Statfjord Transport A/S
Stockage Geologique de Gaz de Lavera
Suddeutsche Erdgas Transport Gesellschaft mit beschrankter Haftung
Sun East Company Ltd.
Supertex, Inc.
Sydis, Inc.
Syncrude Canada Ltd.
Synergistics Industries Limited
System Plaza Kabushiki Kaisha
305120 Alberta Ltd.
TAR-Tankanlage Rumlang AG
TBN Tanklager-Betriebsgesellschaft Nurnberg mbH
Taglu Enterprises Ltd.
Taihei Bussan K.K.
Taiko Sekiyu K.K.
Taisei Kogyo Sekiyu Hanbai K.K.
Takahama Kosan Kabushiki Kaisha
Taketsuru Yugyo K.K.
Tanaka Sekiyu Hanbai K.K.
Tankanlage A. G., Mellingen
Tanklager Altishausen A. G.
Tanklager Gesellschaft, Koln
Tanklager-Gesellschaft Tegel
Tanklager Lechelles I S.A.
Tanklager Taegerschen AG
Tecnica Quimica Petrolera, S.A. de C. V.

Tecumseh Gas Storage Limited
THUMS Long Beach Company
Thyssengas G.m.b.H.
TIBA Speditions GmbH
Toa Nenryo Kogyo Kabushiki Kaisha
Tohko Plastics Company, Limited
Tohpren Co. Ltd.
Toko Sekiyu K.K.
Tonen Energy International Corp.
Tonen Maintenance K.K.
Tonen Sekiyukagaku Kabushiki Kaisha
Tonen Tanker Kabushiki Kaisha
Tonen Technology K. K.
Towa Compounding Co. Ltd.
Towa Sekiyu K.K.
Toyoshina Film Company, Ltd.
Trans-Arabian Pipe Line Company
Transalpine Oelleitung in Oesterreich Gesellschaft m.b.H.
Transgaz Lavera
Tsurumaru Unyu K.K.
Turkish Petroleum Company, Limited
UBAG—Unterflurbetankungsanlage Flughafen Zurich
Van Salt Water Disposal Company
W.A.G. Pipeline Proprietary Limited
Wako Jushi Kabushiki Kaisha
Wako Kasei Kabushiki Kaisha
Wartempomp Nederland B.V.
Westdeutsche Erdolleitungs-G.m.b.H.
Westgas G.m.b.H.
Westgastransport B.V.
Winnipeg Pipe Line Company Limited
Wohnungsbaugesellschaft, Steimbke-Rodewald G.m.b.H.
Worex et Cie
Yasaka Sekiyu K.K.
Yellowstone Pipe Line Company
Yoshiki Sekiyu Kabushiki Kaisha
Yoshimi Gas Kabushiki Kaisha
Yuai Sekiyu K.K.
Yugen Kaisha Nishi Kobe Bosai Center

MOBIL OIL CORPORATION

Abu Dhabi Petroleum Company Limited
Ace Polymer Co., Ltd.
Adria-Wien Pipeline Gesellschaft m.b.H.
AIMCO (ALPHA) Shipping Company
AIMCO Holdings Limited
AIMCO (OMEGA) Shipping Company Ltd.
Aircraft Fuel Supply B.V.
Airtankdienst Koln
AK Chemie GmbH
AK Chemie GmbH & Co KG
Akauma Asphalt Industries, Ltd.
Alexandroupolis Petroleum Installation S.A.
Allied Asphalts Limited
Alpa Alet Ve Dayanikli Tuketim Mamulleri Pazarlama A.S.
Alton Petrochemical Company Limited
Alyeska Pipeline Service Company
Ammenn GmbH
Ankara Gaz Satis Anonim Sirketi
Arabian American Oil Company
Arabian Energy Company Limited, The
Arabian International Maritime Company Limited
Arabian International Maritime Company
The Arabian Petroleum Supply Company (S.A.)
Arabian Shipping & Trading Company S.A.
Arabian Trading Company S.A.
Aral Aktiengesellschaft
A/S Fjellvegen
The Associated Octel Company Limited
Associated Octel Company (Plant) Limited
ATAS-Anadolu Tasfiyehanesi Anonim Sirketi
Atlas Sahara S.A.
Australian Synthetic Rubber Company Limited
Autobahn-Betriebe Gesellschaft m.b.H.
Aviation Fuel Services Limited
Aygaz Anonim Sirketi

B.V. Beheersmaatschappij MOBEM
Bayerische Erdgasleitung GmbH
Bin Sulaiman Mobil Towers
Bayerische Mineral Industrie A.G.
Beer GmbH
Beer GmbH & Co. Mineralol-Vertriebs—KG
Bow Fortune S.A.
Bow Spring Shipping S.A.
Bow Star S.A.
Bow Sun S.A.
Brussels Airfuels Service S.C.
Buffalo River Improvement Corporation
Canner's Steam Company, Incorporated
Canyon Reef Carriers, Inc.
CAS (Combined Automation Systems) B.V.
Celmisia Shipping Corporation
Central African Petroleum Refineries (Pvt) Limited
Central Kagaku Kabushiki Kaisha
Cercera S.A.
Changi Airport Fuel Hydrant Installation Pte. Ltd.
Chuo Nenryo Gas Kabushiki Kaisha
Colombianos Distribuidores de Combustibles, S.A. (CODI)
Colonial Pipeline Company
Comet-Bennstoffdienst GmbH
Commercial Polymers Pty. Ltd.
Commodore Maritime Company, S.A.
Compagnie Africaine de Transport Cameroun
Compagnie D'Entreposage Communautaire
Compagnie Rhenane de Raffnage
Compagnie Senegalaise des Lubrifiants (C.S.L.)
Compania de Lubricants de Chile Limitada (Copec-Mobil Ltda.)
Compania Mexicana de Especialidades Industriales, S.A. de C.V.
Consortium Raymond Duez
Cook Inlet Pipe Line Company
Cyprus Petroleum Refinery Limited
D. Muhlenbruch GmbH

D. Muhlenbruch GmbH & Co. KG
De. Ba. S.p.A.—Industrial Petrolifero Deposito di Bari
Depot Petrolier de Mourepiane
Depot Petrolier du Gresivaudan
Depot de Petrole Cotiers
Depots Petroliers de La Corse (DPLC)
Deutsche Pentosin-Werke GmbH
Deutsche Transalpine Oelleitung GmbH
Dicomi S.r.l.
Dixie Pipeline Company
Dukhan Services Company
East Japan Oil Development Company Ltd.
Eastern Lease Company Ltd.
East Texas Salt Water Disposal Company
Emoleum (Asphalts) Limited
Energas S.r.l.
Entrepot Petrolier de Chambery
Entrepot Petrolier de Dijon
Entrepot Petrolier de Mulhouse (E.P.M.)
Entrepot Petrolier de Nancy
Enterprise Jean Lefebvre
Erdgas-Verkaufs-Gesellschaft mbH
Erdoel-Lagergesellschaft mbH
Erdoel-Raffinerie Neustadt GmbH & Co. oHG
Erdoelbetrieb Reitbrook
Establissments Bouthenet
Ets. Starck & Cie
Europetrol S.p.A.
Faavang Autoverksted A/S
FACEL
Fairwind Maritime Company, S.A.
Felix Oil Company
Fibil, S.A.
Filtros De Costa Rica S.A.
Frome-Broken Hill Company Proprietary Limited
Fruehmesser Mineraloelhandels GmbH & Co. KG
Fruehmesser GmbH
Fuso Operations Kabushiki Kaisha

Futuro Enterprises (Christchurch) Ltd.
Futuro Homes (N.Z.) Ltd.
Gatwick Refueling Services Limited
Gaz Aletleri Anonim Sirketi
Geomines-Caen
Geovexin
Ghana Bunkering Services Limited
Goteborgs Branslesortering AB
Groupement Immobilier Petrolier G.I.P.
Groupement Petrolier Aviation G.P.A.
Groupement Petrolier De Brest (GPB)
Handelmaatschappij Hugenholtz & Co. B.V.
Haniel Handel Gmbh
H. van der Heijden Service Stations B.V.
Heizoel-Handelsgesellschaft mbH
Hellas Gas Storage Company S.A.
Hormoz Petroleum Company
Hydranten-Betriebs-Gesellschaft, Flughafen Frankfurt
Imbert G. Distribution De Produits Petroliers
Industrial Interamericana De Filtros Ltda. (INTERFIL)
Iranian Oil Participants Limited
Iranian Oil Services (Holdings) Limited
Iranian Oil Services Limited
Iraq Petroleum Company, Limited
Iraq Petroleum Pensions Limited
Iraq Petroleum Transport Company Limited
Iside, S.p.A.
Istanbul Petrol ve Makine Yaglari Limited Sirketi
Italoil S.p.A.
Japan Airport Fueling Service Co. Limited
J.E.C.O.P.
K.K. Sankyo Plastics
K.K. Toresen
Kansai Petro Terminal Co., Ltd.
Kanto Kygnus Sekiyu Hambai K.K.
Karl Storz Gmbh & Co. KG
Kawasaki Kygnus Sekiyu Hambai Kabushiki Kaisha
Keihin Kygnus Sekiyu Hambai Kabushiki Kaisha

Keiyo Sea-Berth Company, Limited
Kettleman North Dome Association
Klaus Koehn GmbH
Klaus Koehn GmbH & Co. Mineraloel KG
Kurt Ammenn GmbH & Co. K.G.
Kygnus Ekika Gas Kabushiki Kaisha
Kygnus Kosan Kabushiki Kaisha
Kygnus Marketing Service K.K.
Kygnus Sekiyu Kabushiki Kaisha
Kyokyto Petroleum Overseas, Ltd.
Kyokuto Sekiyu Kogyo Kabushiki Kaisha
Likit Petrol Gazi ve Yakit Ticaret A.S.
Lubland Limited
Lubricantes del Sur, S.A.
Marceaux & Cie
Matco Tankers (U.K.) Limited
Maury Manufacturing Company, Inc.
Milan Airport Refueling Service
Mediterranean Refining Company
Meentzen & Franke GmbH & Co.
Meritrans S.p.A.
Mertl GmbH
Mineralol-Handels-Gesellschaft Mbh
Mobil Atlas Sociedad Anonima de Capital Variable
Mobil Catalysts Corporation of Japan
Mobil Comercio, Industria e Servicos Ltda.
Mobil Corporation
Mobil Gaz-Mobil Petrol Gazlari Anonim Sirketi
Mobil Korea Lube Oil Industries Inc.
Mobil Motor Rest AG
Mobil Nile Oil Company
Mobil Oil Gabon
Mobil Oil Ghana Limited
Mobil Oil Maroc
Mobil Oil Nigeria Limited
Mobil Oil Nord-Africaine
Mosul Petroleum Company Limited
Motel Rest SA

Mt. Marrow Blue Metal Quarries Pty.
Near East Development Corporation
New Zealand Refining Company Limited, The
New Zealand Synthetic Fuels Corp. Ltd.
New Zealand Synthetic Fuels (Housing) Corporation Limited
Nichimo Oil (Bermuda) Co., Ltd.
Nichimo Sekiyu Seisei Kabushiki Kaisha
Nippon Unicar Company Limited
Norddeutsche Erdgas-Aufbereitungs GmbH
Nottingham Gas Limited
N.V. Rotterdam-Rijn Pijpleiding Maatschappij
N.V. Socony-Standard-Vacuum Oil Company
Octel Associates
Octel S.A.
Oilkol (Proprietary) Limited
Oil Service Company of Iran (Private Company)
Oldenburgische Erdoel Gesellschaft mit beschrankter Haftung
Olympic Pipe Line Company
P.T. Arun Natural Gas Liquefaction Company
P.T. Berau Coal
P.T. Stanvac Indonesia
Paloma Pipe Line Company
Pars Investment Corporation
Paul Harling Mineralole Gmbh & Co. KG
P.6—Groep B.V.
Peace Pipe Line Ltd.
Perretti Petroli S.p.A.
Petrocab
Petrogas Processing Ltd.
Petroleum Refineries (Australia) Proprietary Limited
Petroleum Services (Middle East) Limited
Petrol Fuel S.p.A.
Petrolrif S.p.A.
Petromin Lubricating Oil Company
Petromin Lubricating Oil Refining Company
Petromin-Mobil Yanbu Refinery Company Ltd.

Pipe Line Banal de La Goulette
Plegadizos para la Industria S.A.
Poly Oil Chimie (P.O.C.)
Progas Limited
Rainbow Pipe Line Company, Ltd.
Rhodes Petroleum Installation S.A.
Rivers Court Estates, Limited
Road Binders (Proprietary) Limited
Rohol-Aufsuchungs Gesellschaft mbH
Rundel Mineralolvertrieb GmbH
Ruhrgas Aktiengesellschaft
Samarco (Alpha) Shipping Company
Samarco (Beta) Shipping Company
Santa Clara Waste Water Company
Sarni S.p.A.
Saudi Arabian Maritime Company
Saudi Can Company, Ltd., The
Saudi Chemical Industries Company Limited
Saudi Maritime Company Ltd.
Saudi Tankers Limited
Saudi Yanbu Petrochemical Company
Schubert Kommanditgesellschaft
Segher de Mexico, S.A. de C.V.
Seibu Kygnus Sekiyu Hambai Kabushiki Kaisha
SENERCO
Seram Societa per Azioni (S.p.A.)
Sierra Leone Petroleum Refining Company Limited, The
Sociedad Calle 67, Ltda.
Societa Italiana per l'Oleodotto Transalpino, S.p.A.
Societe Africaine de Raffinage
Societe Alfred Ott & Cie
Societe Belge de Transport par Pipeline S.A.
Societe Camerounaise des Depots Petroliers (S.C.D.P.)
Societe Camerounaise Equatoriale De Fabrication De Lubrifiants "S.C.E.F.L."
Societe Civile de Mustapha
Societe Civile Immobiliere Courcelles-Etoile
Societe Civile Immobiliere de Construction de 34 Avenue du General Leclerc a Boissy-St-Leger

Societe Civile Immobiliere de Construction "La Residence Brune"
Societe Civile Immobiliere du 10 Bd. de la Republique A La Garenne-Colombes
Societe Civile Immobiliere Kleber-Etoile
Societe Civile Immobiliere La Fontaine Saint Lucien
Societe Dahomeenne d'Entreposage de Produits Petroliers
Societe d'Armement Fluvial et Maritime "SOFLUMAR"
Societe de Construction & de Gestion CB 12
Societe de Distribution Castelroussine (SODICA)
Societe de Gaz D'Oceanic (SOGADOC)
Societe de Gestion des Stocks Petroliers de Cote D'Ivorie
Societe de Manutention de Carburants Aviation (S.M.C.A.)
Societe de Manutention de Carburants Aviation Dakar-Yoff
Societe de Manutention de Carburants Aviation de Tahiti (SOMCAT)
Societe de Materialx d'Etancheite Pour Le Entreprises (Meple)
Societe d'Entreposage de Bobo-Dioulasso (S.E.B.)
Societe d'Entreposage de Gabes
Societe d'Entreposage d'Hydrocarbures de Bingo (SEHBI)
Societe d'Entreposage de San Pedro (SESP)
Societe d'Entreposage Petrolier au Burundi
Societe d'Habitations a Loyer Modere de la Seine Maritime
Societe des Bitumes et Cut-Backs du Cameroun
Societe Des Huiles Lemanhieu
Societe du Pipe-Line Sud-Europeen
Societe Francaise Stoner-Mudge
Societe Gabonaise d'Entreposage de Produits Petroliers
Societe Gabonaise de Raffinage
Societe Industrielle des Asphaltes et Petroles de Lattaquie (Syrie) S.A.
Societe Ivoirienne de Fabrication de Lubrifiants (S.I.F.A.L.)

Societe Ivoirienne de Raffinage
Societe Mauritanienne d'Entreposage de Produits Petroliers
Societe Malienne D'Entreposage (SME)
Societe Nationale de Raffinage (Sonara)
Societe Nouvelle pour l'Epuration des Huiles de Transformateurs—Septra
Societe Pizo De Formulation De Lubrifiants (PIZOLUB)
Societe Tahitienne de Depots Petroliers
Societe Tchadienne D'Entreposage de Produits Petroliers
Societe Togolaise d'Entreposage (STE)
Sonarep (South Africa) (Proprietary) Limited
SONEX
South African Oil Refinery (Proprietary) Limited
South Saskatchewan Pipe Line Company
Statfjord Transport A.S.
Sun East Company, Limited
Sydney Metropolitan Pipeline Pty. Ltd.
System Plaza Inc.
T.R. Miller Mill Company, Inc.
Tankbau Gmbh
Tanklagergesellschaft Koln-Bonn
Tecklenburg GmbH
Tecklenburg GmbH & Co. Energiebedarf K.G.
Thailand Lubricant Products Limited
Thailand Solvent Products, Ltd.
Thums Long Beach Company
T. M. Duche Co., Inc.
Toa Nenryo Kogyo Kabushiki Kaisha
Tohko Plastics Co., Ltd.
Tohpren Co., Ltd.
Tonen Energy International Corp.
Tonen Maintenance Kabushiki Kaisha
Tonen Properties, Inc.
Tonen Sekiyu Kagaku Kabushiki Kaisha
Tonen Tanker Kabushiki Kaisha
Tonen Technology Kabushiki Kaisha
Total Centrafricaine de Gestion (TOCAGES)

Towa Compounding Company Limited
Toyoshina Film Co., Ltd.
Tradewind Maritime Co., S.A.
Transalpine Finance Holdings S.A.
Transalpine Oelleitung in Oesterreich Gessellschaft m.b.H.
Trans-Arabian Pipe Line Company
Turkish Petroleum Company Limited
Twifo Oil Palm Plantations Ltd.
UBAG Unterflur Betankungsanlage Flughafen Zurich
United Kingdom Oil Pipelines Limited
W.A.G. Pipeline Pty. Ltd.
Wako Kasei Kabushiki Kaisha
Wakohjushi Kabushiki Kaisha
Walton, Gatwick Pipeline Company Limited
Werner Weidemann Mineraloelvertrieb G.m.b.H.
West London Pipeline & Storage Limited
West Shore Pipe Line Company
Wilhelm Mertl GmbH & Co. KG
Wiri Oil Services Limited
Wolverine Pipe Line Company
WSG, Warmeservice Gmbh
Wyco Pipe Line Company
Wymondham Oil Storage Co., Limited
Zaire Mobil Oil
Zaire Services Des Entreprises Petrolieres

PHILLIPS PETROLEUM COMPANY

Alyeska Pipeline Service Company
Arctic LNG Transportation Company
Bissendorf Biosciences GmbH
Canada Western Cordage Company, Limited
Canyon Reef Carriers, Inc.
Chisholm Pipeline Company
Cochin Refineries Limited
Colonial Pipeline Company
Dixie Pipeline Company
East Texas Salt Water Disposal Company
Explorer Pipeline Company
Great Yarmouth Port Labour Company Limited
Heat Transfer Research, Inc.
Iranian Marine International Oil Company-Iminoco
Kenai LNG Corporation
Long Beach Oil Development Company
Multinational Gas and Petrochemical Services Limited
Norland GmbH fur Grundbesitz und Industrieanlagen
Norpipe A.S.
Norpipe Petroleum UK Limited
Norsea Gas A/S
Norsea Gas GmbH
Norsea Pipeline Limited
Oil Insurance Limited (New)
Papago Chemicals, Inc.
Phillips Carbon Black Limited
Phillips Petroleum International Andina, S.A.
Phillips Petroleum Singapore Chemicals (Private) Limited
Phillips Petroleum Toray Inc.
Phillips-Imperial Petroleum Limited
Polar LNG Shipping Corporation
Renolit—Haus GmbH
Solar Gas, Inc.
Spodco Limited

Spodco-USA, Inc.
The Salk Institute Biotechnology/Industrial Associates Inc.
Venezoil, C.A.
Western Desert Operating Petroleum Company (WEPCO)
White River Shale Oil Corporation

SHELL OIL COMPANY*

A. *Shell Oil Company*

Subsidiary Companies

IND/AG Chemicals, Inc.
Pecten Arabian Company
Pecten Cameroon LNG Limited
Pecten Chemicals Inc.
Pecten Export Corporation
Pecten Middle East Services Company
Pecten Trading Company
Pecten Ventures Limited
Pecten Vietnam Company
SES, Incorporated
Shell Agricultural Chemical Company
Shell Capital, Inc.
Shell Communications, Inc.
Scallop Corporation
Shell Credit, Inc.
Shell Energy Resources Inc.
Shell Export Company
Shell Investment, Inc.
Shell Motorist Club, Inc.
Shell Pipe Line Corporation
Shell Polymers and Catalysts Enterprises Inc.

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* Shell Oil Company's parent corporation is SPNV Holdings, Inc., which, in turn, is owned by Shell Petroleum N.V. The latter's parents are Royal Dutch Petroleum Company (a Netherlands corporation) and The "Shell" Transport and Trading Company, p.l.c. (a United Kingdom corporation). Shell Oil Company itself owns directly or indirectly, both 100% and less than 100% stock interests in approximately 120 corporations that operate both in the United States and in foreign countries. All of the companies are often referred to collectively as the "Royal Dutch/Shell Group of Companies." Counsel is advised that there are subsidiaries, not wholly owned, and affiliates throughout the world of this group which, in the aggregate, are so numerous that they could not be determined or identified for the Court within the time frame for filing this Jurisdictional Statement.

Triton Biosciences Inc.
Western Farm Services, Inc.

Affiliated Companies

Fractionation Research, Inc.
Gravcap, Inc.
Heat Transfer Research, Inc.
Inland Corporation
Loop, Inc.
Lucky Chance Mining Company, Inc.
Mesbic Financial Corporation of Houston
Oil Companies Institute for Marine Pollution Compensation Limited
Oil Insurance Limited
Seadock, Inc.

B. *Shell Credit, Inc.*

Subsidiary Companies

Shell Finance Company
Shell Leasing Company

C. *Shell Energy Resources Inc.*

Subsidiary Companies

Pecten International Company
Shell Gas Piepline Company
Shell Gas Trading Company
Shell Mining Company
Shell Offshore Inc.
Shell Western E&P Inc.
Scallop Coal Company

D. *Pecten International Company*

Subsidiary Companies

Pecten Argentina Company
Pecten Ash Sham Company

Pecten Bahamas Company
Pecten Belize Company
Pecten Brazil Alagoas Company
Pecten Brazil Alagoas Petroleum Company
Pecten Brazil Amazon Company
Pecten Brazil Amazon Exploration Company
Pecten Brazil Amazon Exploration and Development Company
Pecten Brazil Amazon Petroleum Company
Pecten Brazil Bahia Company
Pecten Brazil Bahia Exploration Company
Pecten Brazil Bahia Exploration and Development Company
Pecten Brazil Bahia Petroleum Company
Pecten Brazil Exploration Company
Pecten Brazil Maranhao Company
Pecten Brazil Maranhao Exploration Company
Pecten Brazil Petroleum Company
Pecten Brazil Rio Grande Do Norte Company
Pecten Cameroon Company
Pecten Canada Limited
Pecten Ecuador Company
Pecten Guinea-Bissau Company
Pecten Malaysia Company
Pecten Malaysia Petroleum Company
Pecten Orient Company
Pecten Overseas Petroleum Company
Pecten Paraguay Company
Pecten Portugal Company S.A.R.L.
Pecten Potiguar Company
Pecten Santos Company
Pecten Santos Exploration Company
Pecten Santos Petroleum Company
Pecten Sarawak Company
Pecten Syria Company
Pecten Syria Petroleum Company
Pecten Tanzania Company
Pecten Tunisia Company

Pecten Victoria Company
Taranaki Offshore Petroleum Company

E. *Shell Mining Company*

Subsidiary Companies

Bellaire Trucking Company
Pecten Coal International Inc.
R. & F. Coal Company
Triton Coal Company
Turris Coal Company
Billiton Metals Inc.
Billiton Minerals U.S.A. Inc.

F. *Shell Offshore Inc.*

Subsidiary Companies

Burrwood Gathering Company
SOI Royalties Inc.

G. *Shell Western E&P Inc.*

Subsidiary Companies

Belridge Farms
Belridge Packing Co.
Chaparro Gathering Company
Choctaw Pipe Line Company
Swepi Royalties Inc.
Shell California Offshore Pipeline Inc.
Shell Cortez Pipeline Company
Shell Western Pipelines Inc.
East Texas Salt Water Disposal Company
Grande Ecallie Land Company, Inc.
Thums Long Beach Company
Van Salt Water Disposal Company
WIDC (Wyoming Industrial Development Corporation)

H. *Shell Cortez Pipeline Company*

Affiliated Company

Cortez Capital Corporation

I. *Pecten Arabian Company*

Subsidiary Company

Pico Limited

J. *Taranaki Offshore Petroleum Company*

Subsidiary Company

Taranaki Offshore Petroleum Company Limited

K. *Shell Chemical Company*
(a division of Shell Oil Company)

Affiliated Companies

George Newman & Company
United Scientific, Inc.

L. *Pecten Trading Company*

Affiliated Company

Oil Companies Institute for Marine Pollution Compensation Limited

M. *Western Farm Service, Inc.*

Subsidiary Company

Pioneer Equipment Co.

N. *Shell Pipe Line Corporation*

Subsidiary Companies

Butte Pipe Line Company
San Joaquin Valley Pipe Line Company

Affiliated Companies

Dixie Pipeline Company
Explorer Pipeline Company
Locap, Inc.
Olympic Pipe Line Company
Plantation Pipe Line Company
West Shore Pipe Line Company
Wolverine Pipe Line Company

O. *Shell Polymers and Catalysts Enterprises Inc.*

Subsidiary Companies

Ardyne Inc.
CRI Ventures, Inc.
Morrison Molded Fiber Glass Company
Premix/EMS Inc.
Quazite Corporation
Rampart Packaging Inc.
Xerkon Inc.

P. *Morrison Molded Fiber Glass Company*

Subsidiary Companies

AFC, Inc.
Glastrusions, Inc.
Glass-Steel, Inc.

Q. *Scallop Coal Company*

Subsidiary Companies

Justin Coal Corporation
Marrowbone Development Company
Wolf Creek Collieries Company
Massey Coal Terminal Corporation

R. *Billiton Metals Inc.*

Subsidiary Companies

Billiton Commodies Inc.

S. *Scallop Corporation*

Subsidiary Compo

AP Shipping Corporation
Argus Realty Services Inc.
Asiatic Petroleum Corporation
Greater New York Terminal, Inc.
Houston Fuel Oil Terminal, Inc.
Nickerson American Plant Breeders Inc.
Royal Lubricants Company, Inc.
Scallop Liquified Natural Gas, Inc.

T. *Marrowbone Development Company*

Subsidiary Companies

Big Beaver Coal Company

U. *Massey Coal Terminal Corporation*

Subsidiary Companies

Clipper Coal Corporation
Comcoal Corporation
East Kentucky Energy Corporation
Kermit Coal Company
Pike County Coal Corporation
Redbone Coal Company, Inc.
Massey Coal Terminal S. C. Corporation
SLT Corporation
Sunset Coal Corporation
Tug River Mining Group, Inc.

V. *Massey Coal Terminal S. C. Corporation*

Subsidiary Companies

Cooper River Coal Terminal Company

UNION OIL COMPANY OF CALIFORNIA

Unocal Corporation
Union Exploration Partners, Ltd.